[redacted]

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1967

No. [redacted]

JIM GARRISON, APPELLANT,

vs.

LOUISIANA.

APPEAL FROM THE SUPREME COURT OF LOUISIANA

FILED AUGUST 28, 1968
JURISDICTION NOTED NOVEMBER 12, 1968

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No. 400

JIM GARRISON, APPELLANT,

vs.

LOUISIANA.

APPEAL FROM THE SUPREME COURT OF LOUISIANA

INDEX

	Original	Print
Record from the Criminal District Court, Parish of Orleans, Louisiana		
Chronological order of minute entries	5	1
Endorsements on the reverse of the information for violating Revised Statute 14:47	27	17
Petition of the Judges of the Criminal District Court to Jack P. F. Gremillion, Attorney General, State of Louisiana	33	22
Order of the Chief Justice of the Supreme Court of Louisiana appointing the Hon. William H. Ponder as Judge Ad Hoc	38	25
Motion of Attorney General to recuse Jim Garrison	39	26
Information	40	26
Motion of Jim Garrison to recuse William H. Ponder, trial judge	46	33
Application for bill of particulars	48	34

RECORD PRESS, PRINTERS, NEW YORK, N. Y., JANUARY 14, 1964

	Original	Print
Record from the Criminal District Court, Parish of Orleans, Louisiana—Continued		
Demurrer and motion to quash	51	36
Motion for trial by jury	54	38
Answer to application for bill of particulars	57	40
Answer to demurrer and motion to quash	59	41
Answer to motion for trial by jury	65	46
Memorandum in support of answer filed to defendant's motion for trial by jury	67	47
Proposed propositions of law Nos. 1-17	69	48
Motion in arrest of judgment	86	57
Motion for a new trial	88	58
Motion for appeal to Supreme Court of Louisiana and order thereon	91	60
Bills of exception Nos. 1-4, 6, 8-11, 15-18, 20-26, with per curiams	92	61
Clerk's certificate (omitted in printing)	170	117
Proceedings in the Supreme Court of Louisiana	173	118
Opinion, Hamlin, J.	173	118
Application for rehearing with notation "Rehearing Refused"	227	173
Petition for supersedeas, stay of execution and recall of mandate	245	187
Order for supersedeas, stay of execution and recall of mandate	248	189
Notice of appeal to the Supreme Court of the United States	249	190
Further record from the Criminal District Court, Parish of Orleans, Louisiana	252	192
Transcript of trial proceedings—January 21, 22, 23, and 24, 1963	252	192
Appearances	252	192
Preliminary matters	253	192
Testimony of Bert Hyde—		
direct	258	196
cross	267	201
redirect	274	207
Donald Wharton Coleman—		
direct	277	208

	Original	Print
Further record from the Criminal District Court, Parish of Orleans, Louisiana—Continued		
Transcript of trial proceedings—January 21, 22, 23, and 24, 1963—Continued		
Stipulation re testimony of Walter Cowan	279	210
Testimony of Arthur Roane—		
direct	280	210
Colloquy between court and counsel	283	212
Testimony of Arthur Roane— (continued)—		
direct	287	214
cross	298	222
redirect	305	226
recross	306	227
R. J. Dempsey—		
direct	308	228
Colloquy between court and counsel	315	232
Testimony of R. J. Dempsey— (continued)—		
direct	321	235
cross	325	238
Jack Kneece—		
direct	337	246
Theresa E. Shean—		
direct	344	250
State's exhibit no. 3	348	252
Testimony of Robert Kelso—		
direct	362	260
cross	381	272
Bill Reed—		
direct	383	273
cross	390	278
redirect	391	279
Bern Rotman—		
direct	392	279
W. W. Thimmesch—		
direct	396	282
Judge Malcolm V. O'Hara—		
direct	398	283
Colloquy between court and counsel	403	286

	Original	Print
Further record from the Criminal District Court, Parish of Orleans, Louisiana—Continued		
Transcript of trial proceedings—January 21, 22, 23, and 24, 1963—Continued		
Testimony of Judge Malcolm V. O'Hara—(continued)—		
direct	405	288
cross	406	288
redirect	432	303
recross	435	305
further redirect	436	306
further recross	437	306
Judge William J. O'Hara—		
direct	438	307
cross	462	322
Colloquy between court and counsel	497	344
Testimony of Judge William J. O'Hara—(continued)—		
cross	500	346
Judge Shirley G. Wimberly—		
direct	501	347
cross	512	353
redirect	551	376
Judge Oliver Paul Schulingkamp—		
direct	554	378
cross	567	385
redirect	598	404
recross	602	407
Judge Edward A. Haggerty, Jr.—		
direct	609	411
redirect	626	421
recross	626	421
redirect	684	456
further recross	689	459
further redirect	693	462
Judge Bernard J. Bagert—		
direct	694	462
cross	712	473

	Original	Print
Further record from the Criminal District Court, Parish of Orleans, Louisiana—Continued		
Transcript of trial proceedings—January 21, 22, 23, and 24, 1963—Continued		
Testimony of Judge George P. Platt—		
direct	730	484
cross	739	490
redirect	751	498
recross	754	499
Judge Thomas M. Brahney, Jr.—		
direct	762	504
cross	783	516
Judge J. Bernard Cocke—		
direct	794	523
cross	800	526
Colloquy between court and counsel	821	538
Testimony of Judge J. Bernard Cocke—(continued)—		
cross	823	540
Colloquy between court and counsel re impeachment of witness	837	548
Testimony of Judge J. Bernard Cocke—(continued)—		
cross	841	551
Joseph I. Giarrusso—		
direct	846	554
Colloquy between court and counsel	851	557
Testimony of Joseph I. Giarrusso—(continued)—		
direct	855	560
Colloquy between court and counsel	857	560
Testimony of Joseph I. Giarrusso—(continued)—		
direct	861	563
cross	863	564
The State rests	863	565
The Defense rests	863	565
Colloquy between court and counsel re charges	866	565

	Original	Print
Further record from the Criminal District Court, Parish of Orleans, Louisiana—Continued		
Transcript of trial proceedings—February 4, 6, and 28, 1963	875a	571
Court's ruling on propositions of law	877	571
Colloquy between court and counsel re court's ruling	893	581
Opening argument by plaintiff	901	586
Argument by the defendant	907	590
Rebuttal by the plaintiff	926	602
Opinion, Ponder, J.	941	610
Motion for a new trial and motion and arrest of judgment	981	635
Motion in arrest of judgment overruled	984	635
Motion for a new trial overruled	985	636
Sentence	987	637
Motion for order of appeal	990	639
Alternative sentence	992	640
Bills of exception with per curiams filed	992	640
Order of appeal and bail granted	994	641
Clerk's certificate (omitted in printing)	996	642
Order noting probable jurisdiction	997	642

[fol. 5]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

State of Louisiana v. Jim Garrison No. 177-418

CHRONOLOGICAL ORDER OF MINUTE ENTRIES

November 15, 1962.

State of Louisiana vs. Jim Garrison

Information for Viol. R. S. 14:47

Petition to Hon. Jack P. F. Gremillion, Attorney General, State of Louisiana, Baton Rouge, La., filed.

Order of Supreme Court of Louisiana filed.

Motion of Jack P. F. Gremillion, Attorney General, filed.

November 19, 1962.

Hon. Jack P. F. Gremillion, Attorney General, moved the Court, orally, that because this Hon. Court has previously recused itself in the matter of the State of La. vs Jim Garrison, No. 177-418, that the Hon. William H. Ponder, Judge of the Eleventh Judicial District, ascend the bench for this case only, which Motion the Court granted. Thereafter the Hon. Edward A. Haggerty, Jr., recused himself, and the Hon. William H. Ponder, in accordance with the assignment of the Hon. Louisiana Supreme Court of Nov. 13, 1962, filed herein on Nov. 14, 1962, ascended the bench.

State of Louisiana vs. Jim Garrison

Information for Viol. R. S. 14:47

The defendant in the above information, Jim Garrison, in proper person, was placed at the bar of the Court, unattended by Counsel but representing himself.

The State was represented by Jack P. F. Gremillion, [fol. 6] Attorney General, Michael E. Culligan, Assistant Attorney General, and John E. Jackson, Jr., Assistant Attorney General.

Mr. Gremillion moved the Court that the Motion, previously filed herein, for the District Attorney, Mr. Jim Garrison, to recuse himself in the above matter be called.

The State, through the Attorney General, Mr. Jack P. F. Gremillion, submitted said Motion to the Court.

The defendant, Jim Garrison, advised the Court that he had no opposition to the Motion To Recuse Himself and submitted same to the Court.

Thereupon the Court ordered that the Motion for the District Attorney to Recuse himself in This Case be made absolute.

The State, represented by Mr. Gremillion, moved the Court to set a time for the defendant to secure Counsel, time to file special pleadings, that a date be fixed for the State to reply and further that a date for the hearing on said pleadings be fixed.

Thereupon the Court granted the Defendant the remainder of this week to secure Counsel; an additional ten days thereafter for filing of all Motions and Pleadings, prior to arraignment. The State was granted seven days thereafter to reply.

Thereupon the Court set the following dates: Defendant to file Motions and Pleadings by Dec. 4, 1962. State to file Answers by December 11, 1962. Tentative date to hear arguments, December 17, 1962.

The Court ordered that the Attorney General and the Court be furnished with copies of all Defense Motions and Pleadings and also that the Court be furnished with a memoranda of authorities.

[fol. 7] The Court further ordered that the Defense and the Court be furnished with copies of the State's Answers and further that the Court be furnished with a memoranda of authorities.

The defendant was released by the Court, on his own recognizance.

The Hon. William H. Ponder thereupon descended the bench and the Hon. Edward A. Haggerty, Jr., again ascended the bench for the trial of the remainder of the Docket of Section "C" of this Court.

December 4, 1962.

State of Louisiana vs. Jim Garrison

Information for Viol. R. S. 14:47

Motion to Recuse, Demurrer and Motion to Quash, and Application for Bill of Particulars filed in the Clerk's Office of the Criminal District Court by Donald V. Organ, Esq., Counsel for the defendant in the above information.

December 5, 1962.

State of Louisiana vs. Jim Garrison

Information for Viol. R. S. 14:47

Motion for a Trial by Jury, as to the defendant in the above information, filed in the Clerk's Office of the Criminal District Court.

[fol. 8] December 12, 1962.

State of Louisiana vs. Jim Garrison

Information for Viol. R. S. 14:47

Answer to Motion for Trial by Jury, Memorandum in Support of Answer filed to Defendant's Motion for Trial by Jury, Answer to Demurrer and Motion to Quash, Answer to Application for Bill of Particulars and Brief by State, filed by Jack P. F. Gremillion, Attorney General, and M. E. Culligan, Assistant Attorney General, representing the State, in the Clerk's Office of the Criminal District Court on December 11, 1962, as to the defendant in the above information.

December 17, 1962.

State of Louisiana vs. Jim Garrison

Information for Viol. R. S. 14:47

The defendant in the above information was placed at the bar of the Court attended by Donald V. Organ, Esq., and Louis Trent, Esq., for a hearing on Motion to Recuse, Application for Bill of Particulars, Motion for Trial by Jury, and Demurrer and Motion to Quash. The State was represented by Jack P. F. Gremillion, Attorney General, M. E. Culligan, Assistant Attorney General and John E. Jackson, Jr., Assistant Attorney General. The Court having heard arguments by Donald V. Organ, Esq., and Louis Trent, Esq., representing the Defense, and Jack P. F. Gremillion, Attorney General, and M. E. Culligan, Assistant Attorney General, representing the State, and considering the Motions and Memoranda of Authorities in support of said Motions, overruled all four Motions. To which rulings of the Court, Bills of Exceptions were reserved by Defense [fol. 9] Counsel. The Court reserved the right to give additional reasons for its rulings. The defendant was arraigned and, personally and through his Counsel, waived the reading of the Bill of Information and entered a plea of Not Guilty. The Court ordered the plea of Not Guilty recorded. Trial Especially set for Monday, January 21, 1963. Defendant discharged on his bond.

January 18, 1963.

State of Louisiana vs. Jim Garrison

Information for Viol. R. S. 14:47

On Motion of Jack P. F. Gremillion, Attorney General, William H. Ponder, Judge Ad Hoc, ordered Writs of Subpoena Duces Tecum issued on W.W.L. T-V and W.D.S.U. T-V, and the Times Picayune Publishing Company.

January 21, 1963.

State of Louisiana vs. Jim Garrison

Information for Viol. R. S. 14:47

The defendant in the above information was placed at the bar of the Court attended by Donald V. Organ, Esq., and Louis T. Trent, Esq., for trial. The State was represented by Jack P. F. Gremillion, Attorney General, Michael E. Culligan, Assistant Attorney General and John E. Jackson, Jr., Assistant Attorney General. Both sides announced readiness for trial. Miss Margie Witt was duly sworn by the Court to act as a special Court Reporter. Witnesses for the State and the Defense were called. On Motion of the Defense the Court ordered the sequestration of all witnesses, and further ordered the witnesses not to discuss this [fol. 10] case, except with their Counsel, until after the conclusion of the trial. By agreement of the State and the Defense all television and newspaper men were excused from sequestration.

Thereupon Mr. Bert Heyd was duly sworn by the Clerk testified on the part of the State and was cross-examined by the Defense. In connection with the testimony of this witness, the defendant was identified and an article in a newspaper, dated November 2, 1962, was identified. The State offered and the Court ordered filed in evidence the said article, published in the N.O. States-Item on November 2, 1962, which was marked as State Exhibit No. 1. In connection with the re-direct examination of this witness, objection by the Defense was overruled by the Court and a Bill of Exceptions was reserved, as noted by the Stenographer. Donald W. Coleman was duly sworn by the Clerk and testified on the part of the State. In connection with the testimony of this witness, State Exhibit No. 1 was identified. It was stipulated by the State and the Defense that if Mr. Walter Cowan was present he would testify that he had received on the teletype the statement given by Mr. Garrison to Mr. Heyd. Arthur Roane and Jack Dempsey were each duly sworn by the Clerk, each testified on the part of the State and were each cross-examined by the Defense. In connection with the testimony of these wit-

nesses, the defendant was identified. In connection with the testimony of Mr. Roane, objection by Defense Counsel was overruled by the Court on three occasions and Bills of Exceptions were reserved, all as noted by the Stenographer. At 12:05 P.M. Court recessed for lunch.

[fol. 11] At 1:15 P. M. Court resumed. The defendant being present, Counsel for the defendant and Mr. Gremillion and Mr. Jackson, representing the State, being present, the Court ordered the further trial of this case to proceed. Thereupon the Court duly swore Miss Helen Dietrich and Miss Monya Burglass to act as Special Court Reporters. The Court ordered the sequestration of all witnesses. Counsel for the Defense moved the Court that a Bill of Exceptions be reserved as to all statements made prior to November 2, 1962. It was stipulated by the Defense and the State that the article in the States-Item newspaper on August 20, 1962 is the report of Jack Dempsey of statement made to him. The Court overruled making this newspaper clipping a part of the record as the statement does not show malice, but by stipulation the clipping of August 20, 1962, marked State Exhibit No. 2, was filed in evidence. Jack Dempsey retook the witness stand and further testified on the part of the State and was cross-examined by the Defense. Jack Kneece was duly sworn by the Clerk, testified on the part of the State. In connection with the testimony of this witness the defendant was identified. Objection by Defense Counsel to question by the State and answer of this witness was overruled by the Court and Bill of Exceptions was reserved, as noted by the stenographer. Mrs. Theresa Shean was duly sworn by the Clerk and testified on the part of the State. In connection with the testimony of this witness the defendant was identified. It was stipulated by the Defense that the copy of statements made by the defendant were made by him. The State offered the said statements, marked State Exhibit No. 3, filed in evidence. On Motion of the Defense, there being no objection on the part of the State, the [fol. 12] statement was read to the Court by Assistant Attorney General John Jackson, Jr. Robert N. Kelso was duly sworn by the Clerk testified on the part of the State and was cross-examined by the Defense. In connection with

the testimony of this witness, newspaper clippings dated December 4, 1962, marked State No. 4, December 5, 1962, marked State No. 5, December 6, 1962, marked State No. 6, and December 7, 1962, marked State No. 7, were identified. The State offered the said exhibits filed in evidence. There being no objection on the part of the Defense, the said exhibits were filed in evidence. Objection by Defense Counsel to an answer given by this witness to a question by the State was overruled by the Court and a Bill of Exceptions was reserved, as noted by the stenographer. Bill Reed, Bern Rotman, and Wieck W. Thimmesch were each duly sworn by the Clerk and testified on the part of the State and Mr. Reed was cross-examined by the Defense. Defense Counsel stated to the Court that he wished the same Bill of Exceptions reserved as to these witnesses and that their testimony be restricted solely to that part which showed malice. Judge Malcolm V. O'Hara was duly sworn by the Clerk, testified on the part of the State and was cross-examined by the defense. Motion by Defense Counsel that an answer given by this witness be stricken from the record was overruled by the Court and a Bill of Exceptions was reserved, as noted by the stenographer. The Defense moved the Court that this Bill of Exceptions be reserved as to the testimony of all the Judges if they should take the witness stand. It was now 5:00 o'clock P.M. and Court adjourned until Tuesday, January 22, 1963, at 10:00 o'clock A.M.

[fol. 13] January 22, 1963.

State of Louisiana v. Jim Garrison

Information for Violation R.S. 14:47

The defendant in the above information being present, Counsel for the defendant, Donald V. Organ, Esq., and Louis T. Trent, Esq., being present, Attorney General Jack P. F. Gremillion, and Assistant Attorney Generals Michael E. Culligan and John E. Jackson, Jr., representing the State, being present, the Court ordered the further trial of this case to proceed. The Court ordered the sequestration of all witnesses. Thereupon Judge Malcolm V. O'Hara re-

sumed the witness stand for re-direct examination by the State and re-cross examination by the Defense. Judge William J. O'Hara was duly sworn by the Clerk, testified on the part of the State and was cross-examined by the Defense. In connection with the testimony of this witness the defendant was identified and it was stipulated by the Defense and the State that the testimony of all the Judges other than the testimony showing malice is covered in one Bill of Exceptions previously reserved. In connection with the testimony of this witness on cross-examination by the Defense, photo-static copies of Motions and Orders were identified and filed in evidence by the Defense and marked D-1, D-2, D-3, D-4, D-5, and D-6. At 12:00 o'clock noon Court recessed for lunch.

At 1:15 o'clock P. M., the defendant being present, Counsel for the defendant and the Attorney General and Assistant Attorney General, representing the State, being present, the Court ordered the further trial of this case to proceed.

Thereupon Judge William J. O'Hara resumed the wit- [fol. 14] ness stand and was further cross-examined by the Defense. Judge Shirley G. Wimberly and Judge Oliver P. Schulingkamp were each duly sworn by the Clerk, each testified on the part of the State and were each cross-examined by the Defense. In connection with the testimony of these witnesses the defendant was identified. In connection with the testimony of Judge Wimberly, objection by the Defense was overruled by the Court and a Bill of Exceptions was reserved, as noted by the stenographer. In connection with the cross-examination of this witness, Defense Exhibit No. 1 was identified and photo-static copies of Motions and Orders, marked D-7, D-8, D-9, D-10, were identified and thereupon filed in evidence by the Defense. On Motion of the Defense an Instanter Subpoena was issued for the record of No. 162-231, Section B. This witness further identified Motions and Orders, marked D-11, D-12, D-13, D-14, and D-15, which were thereupon filed in evidence by the Defense. In connection with the re-direct examination of this witness by the State, a copy of a letter dated Oct. 26, 1962 with a list attached was identified and filed in

evidence by the State marked as State Exhibit No. 8. In connection with the testimony of Judge Schulingkamp, State Exhibit No. 8, previously introduced, was identified. Objection by Defense Counsel to questions by the State and Answers by this witness were overruled by the Court on two occasions and Bills of Exceptions were reserved, all as noted by the stenographer. On Motion of Defense Counsel Instanter Subpoenas were issued on the Clerk of the Criminal District Court for the original Motion of J. David McNeill, dated June 1, 1961, and for the original Motion of [fol. 15] Joseph R. Bossetta, dated August 3, 1961. Objection by the State to offers made by the Defense of documents, marked D-16 and D-17, were sustained by the Court and the said documents were not allowed in evidence. The original Motion of J. David McNeill, marked D-18, was identified by this witness and filed in evidence by the Defense. Judge Edward A. Haggerty, Jr., was duly sworn by the Clerk and testified on the part of the State. In connection with the testimony of this witness, the defendant was identified. Defense Counsel stated to the Court that he wished to make the same objection with regard to the line of questioning by the State of this Judge as previously made with regards to the other Judges and reserved the same Bill of Exceptions.

The Court at this time ordered the transcript of the testimony of Monday, January 21, 1963, corrected to read, "The Court reserves the right to assign reasons in a per curiam at a later date, which will be attached to the bill of exceptions". The Court ordered the words "made a part of the Bill of Exceptions" deleted throughout the transcript.

Objection by Defense Counsel to answer by this witness was overruled by the Court and Bill of Exceptions was reserved, as noted by the stenographer.

It now being 5:00 o'clock P. M. Court adjourned until Wednesday, January 23, 1963, at 10: o'clock A.M.

[fol. 16] January 23, 1963.

State of Louisiana vs. Jim Garrison

Information for Viol. R. S. 14:47

The defendant in the above information being present, Counsel for the defendant and the attorney General and Assistant Attorney Generals representing the State being present, the Court ordered the further trial of this case to proceed. The Court ordered the sequestration of all witnesses. Thereupon Judge Edward A. Haggerty, Jr., resumed the witness stand testified further on the part of the State and was cross-examined by the Defense. In connection with the cross-examination of this witness, on Motion of the Defense an Instanter Subpoena was issued on the Clerk of the Criminal District Court to produce the original Motion and Order in case No. 165-564. The record was brought into Court and the original Motion and Order which was signed by this witness was identified. Hotel bills with letter attached, marked D-19 by the defense, was filed in evidence. Judge Bernard J. Bagert was duly sworn by the Clerk and testified on the part of the State. In connection with the testimony of this witness the defendant was identified. At 12:00 o'clock noon Court recessed for lunch.

At 1:15 o'clock P.M., the defendant being present, Counsel for the defendant and the Attorney General and Assistant Attorney Generals, representing the State, being present, the Court ordered the further trial of this case to proceed, and further ordered the sequestration of all witnesses.

Judge Bernard J. Bagert resumed the witness stand further testified on the part of the State and was cross-
[fol. 17] examined by the Defense. This witness was instructed by the Court to remain under the rule as he may be recalled in rebuttal.

Judge George P. Platt was duly sworn by the Clerk, testified on the part of the State and was cross-examined by the Defense. In connection with the testimony of this witness, the defendant was identified and a photo-static

copy of a Bill of Sale, marked D-20 by the defense, was identified and filed in evidence. On Motion of the Defense an Instanter Subpoena was issued on the Clerk of the Criminal District Court to produce the record in case No. 159-238. The said record was brought into Court and the names of the defendants and the charge was read by defense Counsel.

Judge Thomas M. Brahney, Jr., was duly sworn by the Clerk, testified on the part of the State and was cross-examined by the Defense. In connection with the testimony of this witness, the defendant was identified and objection by the Defense to question by the State and answer by this witness was overruled by the Court and a Bill of Exceptions was reserved, as noted by the stenographer. State Exhibit No. 8 was identified by this witness.

Judge J. Bernard Cocke was duly sworn by the Clerk, testified on the part of the State and was cross-examined by the Defense. In connection with the testimony of this witness, the defendant was identified. Copy of a letter to Honorable C. C. Taddy Aycock; dated August 2, 1962, marked D-21 by the defense, was identified by this witness [fol. 18] and thereupon filed in evidence by the Defense.

At 5:07 o'clock P.M. Court adjourned until Thursday, January 24, 1963, at 10:00 o'clock A. M.

January 24, 1963.

State of Louisiana vs. Jim Garrison

Information for Viol. R.S. 14:47

The defendant in the above information being present, Counsel for the defendant and the Attorney General and Assistant Attorney Generals representing the State being present, the Court ordered the further trial of this case to proceed. The Court ordered the sequestration of all witnesses.

Mr. Gremillion stated to the Court that he had been informed by the Court Reporters that they could not go

much longer at the rate they have been working and moved the Court to recess until Monday, January 28th, after hearing today's testimony. The Court stated that he would advise them of his decision on this matter later on in the day.

Thereupon, both sides having announced readiness to proceed, Judge J. Bernard Cocke retook the witness stand and was further cross-examined by the Defense.

An Application for Writ of Subpoena Duces Tecum on Captain Theodore Gregson, returnable Monday, January 28, 1963, was filed by the Defense. There being no objection on the part of the State, the Court ordered the issuance of the said Writ.

Supt. Joseph I. Giarrusso was duly sworn by the Clerk [fol. 19] testified on the part of the State and was cross-examined by the Defense. In connection with the testimony of this witness, objection by the Defense was overruled by the Court on two occasions and Bills of Exceptions were reserved, as noted by the stenographer.

The State rested. The Defense rested.

Defense Counsel submitted to the Court sixteen propositions of law.

At 11:25 o'clock A.M. Court recessed for lunch.

At 1:30 o'clock P. M. Court resumed. The Court stated that he had been presented with an additional proposition of law, making a total of seventeen propositions, with the memorandum of authorities, and that the Court would need additional time to look them over prior to arguments. Court then recessed until 3:00 o'clock P. M.

At 3:00 o'clock P. M. Court resumed.

Defense Counsel asked for the ruling of the Court on the propositions of law that the Court should charge itself, prior to arguments. The Court held that some of the requested charges are correct; some might be qualified and some might be rejected. The Court stated that the requested charges would be ruled on at the next session

on Monday, February 4, 1963, arguments would be heard and the case submitted on that date.

Court then adjourned until Monday, February 4, 1963, at 10:00 o'clock A.M.

[fol. 20] February 4, 1963.

State of Louisiana vs. Jim Garrison

Information for Viol. R.S. 14:47

The defendant in the above information was placed at the bar of the Court attended by Donald V. Organ, Esq., and Louis T. Trent, Esquire. The State was represented by Jack P. F. Gremillion, Attorney General, Michael E. Culligan, Assistant Attorney General and John E. Jackson, Jr., Assistant Attorney General.

Thereupon the Court, having had the seventeen propositions of law submitted by Defense Counsel under advisement, ruled on the propositions of law as follows: Numbers 1, 2 and 3 were granted by the Court, numbers 4, 5, 6, 7, 8, 9, 10, 12, 13, 15 and 17 were granted by the Court with qualifications, and numbers 11, 14 and 16 were rejected by the Court.

Bills of Exception were reserved by Defense Counsel as to the Court's rulings with regards to propositions numbers 11, 13, 14, 16 and 17, all as noted by the stenographer. The Court reserved the right to amplify reasons assigned in Per Curiams which will be attached to the Bills of Exceptions. The Court heard arguments by the State and the Defense and rebuttal argument by the State. Thereupon this case was taken under advisement by the Court until Wednesday, February 6, 1963, at 10:00 o'clock A. M. Defendant discharged on his bond.

[fol. 21] February 6, 1963

State of Louisiana vs. Jim Garrison

Information for Viol. R.S. 14:47

The defendant in the above information was placed at the bar of the Court attended by Donald V. Organ, Esq., and Louis T. Trent, Esquire. The State was represented by Jack P. F. Gremillion, Attorney General, Michael E. Culligan, Assistant Attorney General and John E. Jackson, Jr., Assistant Attorney General.

The Court granted Motion of the Defense requesting that today's proceedings be taken by the Court Reporter. The Court reserved the right to make corrections, where necessary, in the transcript of the trial of this case.

Thereupon the Court, having fully reviewed all the testimony and all the exhibits, rendered judgment of "Guilty as Charged."

Motion For A New Trial and Motion in Arrest of Judgment were filed by Defense Counsel. The Court stated that he will notify the Clerk of Court of the date on which he will rule on said Motions. Defendant discharged on his bond.

Prior to the Court taking leave of the Bench, while in the act of receiving from the Minute Clerk copies of Motions filed, one Philip Guarisco, photographer for The Times-Picayune newspaper, took a flash photograph of the Judge. The Court immediately announced that Court was in session and called the Court to order. After questioning Mr. Guarisco at length, and after having ascertained that the same person, Mr. Guarisco, had previously disobeyed the [fol. 22] Court's instructions, the Court found the said Mr. Guarisco guilty of contempt of Court. The Court sentenced Mr. Guarisco to pay a fine of twenty-five dollars ($25.00) or, in default of payment of said fine, to serve ten (10) days in the parish prison.

February 19, 1963

State of Louisiana vs. Jim Garrison

Information for Viol. R.S. 14:47

On Motion of Jim Garrison, District Attorney for the Parish of Orleans, the Court this day signed the following order:

It Is Ordered that Jim Garrison, District Attorney for the Parish of Orleans, pay to the firm of Dietrich & Witt, Inc., the sum of $3,315.82, as per bills attached. It is further ordered that Jim Garrison, District Attorney for the Parish of Orleans pay this amount, $3,315.82, out of the fines and forfeitures account which is under the control of the District Attorney for the Parish of Orleans, State of Louisiana.

New Orleans, La.

February 19, 1963

Jim Garrison, District Attorney, Parish of Orleans;

Jack P. F. Gremillion, Attorney General, State of Louisiana.

George P. Platt, Judge of Section "B";

J. Bernard Cocke, Judge, Judge of Division "E";

Shirley G. Wimberly, Judge of Division "G";

[fol. 23] Bernard J. Bagert, Judge of Division "H";

Edward A. Haggerty, Jr., Judge, Judge of Division "C";

Thos. M. Brahney, Jr., Judge of Division "D";

Oliver P. Schulingkamp, Judge of Division "F";

Malcolm V. O'Hara, Judge of Division "A".

February 28, 1963.

State of Louisiana vs. Jim Garrison

Information for Viol. R.S. 14:47

The defendant in the above information was placed at the bar of the Court attended by Donald V. Organ, Esq., and Louis T. Trent, Esquire. The State was represented by Jack P. F. Gremillion, Attorney General, John E. Jackson, Jr., Assistant Attorney General and Robert S. Link, Assistant Attorney General. Motion for A New Trial and Motion In Arrest of Judgment, previously filed, were submitted by Defense Counsel. Motion in Arrest of Judgment was overruled by the Court. To which ruling of the Court, Bill of Exceptions was reserved, as noted by the Stenog-[fol. 24] rapher. Motion For A New Trial was overruled by the Court. To which ruling of the Court, Bill of Exceptions was reserved, as noted by the Stenographer. Said Bills of Exceptions were submitted to the Court by Defense Counsel. The Court advised Counsel for the Defense that it would be necessary for the Court to make some corrections in the transcript of this case. Defense Counsel advised the Court that they had no objections to the Court having the necessary corrections made.

Thereupon the defendant, through his Counsel, waived all legal delays, and was thereupon sentenced by the Court to pay a fine of one thousand dollars ($1,000.00). Motion for Appeal To Supreme Court of Louisiana was filed by Defense Counsel. Thereupon Court recessed until 2:00 o'clock P.M., in order that the Court might review the Bills of Exceptions.

At 2:04 o'clock P.M., the defendant being present, Counsel for defendant and the Attorney General and Assistant Attorney Generals, representing the State, being present, Court resumed.

Thereupon the Court, acting under authority of Law, amended and corrected the sentence previously imposed to read "to pay a fine of one thousand dollars ($1,000.00) or, in default of payment of said fine, to serve four (4) months in the Parish Prison."

Bills of Exceptions No. 1, No. 2, No. 3, No. 4, No. 6, No. 8, No. 9, No. 10, No. 11, No. 15, No. 16, No. 17, No. 18, No. 20, No. 21, No. 22, No. 23, No. 24, No. 25, and No. 26, with the [fol. 25] Per Curiams attached thereon, were filed.

The following Order was signed by the Court.

Order

Let a Suspensive appeal be granted in this case on behalf of the defendant, Jim Garrison, to the Supreme Court of the State of Louisiana, and let the return date be the 28th day of March, 1963, and pending said suspensive appeal, let the defendant be released on bond in the amount of $500.00 on his own recognizance.

New Orleans, Louisiana, 28th day of February, 1963, at 2:08 P.M.

Wm. H. Ponder, Judge.

Defendant discharged on his bond of five hundred dollars ($500.00) on his own recognizance.

Court adjourned.

[fol. 27]

In Criminal District Court

Parish of Orleans, Louisiana

Endorsements on the Reverse of the Information for Violating Revised Statute 14:47

November 19, 1962.

Hon. Jack P. F. Gremillion, Attorney General, moved the Court, orally, that because this Hon. Court has previously recused itself in the matter of the State of La. vs Jim Garrison, No. 177-418, that the Hon. William H. Ponder, Judge of the Eleventh Judicial District, ascend the bench for this case only, which Motion the Court granted. Thereafter the Hon. Edward A. Haggerty, Jr., recused himself, and the Hon. William H. Ponder, in accordance with the assignment of the Hon. Louisiana Supreme Court of Nov. 13, 1962, filed herein on Nov. 14, 1962, ascended the bench.

The defendant in the above information, Jim Garrison, in proper person, was placed at the bar of the Court, unattended by Counsel but representing himself.

The State was represented by Jack P. F. Gremillion, Attorney General, Michael E. Culligan, Assistant Attorney General, and John E. Jackson, Jr., Assistant Attorney General.

Mr. Gremillion moved the Court that the Motion, previously filed herein, for the District Attorney, Mr. Jim Garrison, to recuse himself in the above matter be called.

The State, through the Attorney General, Mr. Jack P. F. Gremillion, submitted said Motion to the Court.

The defendant, Mr. Jim Garrison, advised the Court that he had no opposition to the Motion to Recuse Himself and submitted same to the Court.

[fol. 28] Thereupon the Court ordered that the Motion for the District Attorney to Recuse Himself in This Case be made absolute.

The State, represented by Mr. Gremillion, moved the Court to set a time for the defendant to secure Counsel, time to file special pleadings, that a date be fixed for the State to reply and further that a date for the hearing on said pleadings be fixed.

Thereupon the Court granted the Defendant the remainder of this week to secure Counsel; an additional ten days thereafter for filing of all Motions and Pleadings, prior to arraignment. The State was granted seven days thereafter to reply.

Thereupon the Court set the following dates: Defendant to file Motions and Pleadings by Dec. 4, 1962. State to file Answers by Dec. 11, 1962. Tentative date to hear arguments, Dec. 17, 1962.

The Court ordered that the Attorney General and the Court be furnished with copies of all Defense Motions and Pleadings and also that the Court be furnished with a memoranda of authorities.

The Court further ordered that the Defense and the Court be furnished with copies of the State's Answers and further that the Court be furnished with a memoranda of authorities.

The defendant was released by the Court, on his own recognizance.

The Hon. William H. Ponder thereupon descended the bench and the Hon. Edward A. Haggerty, Jr., again ascended the bench for the trial of the remainder of the Docket of Section "C" of this Court.

Helen Sullivan, Minute Clerk, Section "C"

[fol. 29] Dec. 4, 1962.

Motion to Recuse, Demurrer and Motion to Quash, and Application for Bill of Particulars filed by Donald V. Organ, Esq., Counsel for defendant, in the Clerk's Office of the Criminal District Court.

Helen Sullivan, Minute Clerk.

Dec. 5, 1962.

Motion for Trial by Jury filed by Defense, in Clerk's Office of the Criminal District Court.

Helen Sullivan, Minute Clerk.

Dec. 12, 1962.

Answer to Motion for Trial by Jury, Memorandum in Support of Answer filed to Defendant's Motion for Trial by Jury, Answer to Demurrer and Motion to Quash, Answer to Application for Bill of Particulars and Brief by State filed by Jack P. F. Gremillion, Atty. Gen. State of La. and M. E. Culligan, Asst. Atty. Gen. in the Clerk's Office of the Criminal District Court on Dec. 11, 1962.

Helen Sullivan, Min. Clk.

Dec. 17, 1962.

Hearing held this day on Motion to Recuse, Application for Bill of Particulars, Motion for Trial by Jury, and Demurrer and Motion to Quash.

The Court having heard arguments by Donald V. Organ, [fol. 30] Esq., and Louis Trent, Esq., representing the Defense, and Jack P. F. Gremillion, Attorney General, and M. E. Culligan, Assistant Attorney General, representing the State, and considering motions and memoranda of authorities in support of said motions, overruled all four motions. To which rulings of the Court, Bills of Exceptions were reserved. The Court reserved the right to give additional reasons for its rulings. The defendant was arraigned and through his counsel waived the reading of the Bill of Information and entered a plea of Not Guilty. The Court ordered the plea of Not Guilty recorded.

Trial especially set for Monday, Jan. 21, 1963.

Helen Sullivan, Minute Clerk.

Jan. 18, 1963.

Writs of Subpoena Duces Tecum on W.W.L.T-V., W.D.S.U.T-V, and Times Picayune, filed by the State.

Helen Sullivan, Minute Clerk.

Jan. 21, 1963.

Trial started this day and continued through Jan. 22, 23 and 24. On Jan. 24, 1963 on Motion of the Defense a Subpoena Duces Tecum was issued on Capt. Theodore Gregson returnable Monday, Jan. 28, 1963. The State having heard all their witnesses, rested. The Defense rested without calling witnesses. Seventeen propositions of law were submitted to the Court by Defense. Court to rule on propositions and hear arguments on Feb. 4, 1963.

Helen Sullivan, Minute Clerk.

[fol. 31] February 4, 1963.

The Court this day ruled on the propositions of law submitted by Defense Counsel. The Court granted propositions Numbers 1, 2, and 3, without qualifications, Numbers 4, 5, 6, 7, 8, 9, 10, 12, 13, 15 and 17 were granted with qualifications and Numbers 11, 14 and 16 were rejected. Bills of

Exceptions were reserved by Defense Counsel as to the Court's rulings with regards to propositions No. 11, 13, 14, 16 and 17, all as noted by the stenographer. The Court reserved the right to amplify reasons assigned in Per Curiams which will be attached to the Bills of Exceptions. The Court, having heard arguments by the State and the Defense, and the rebuttal argument by the State, took this case under advisement until Wednesday, February 6, 1963, at 10:00 A.M.

Helen Sullivan, Minute Clerk.

February 6, 1963.

The Court, considering the testimony and the exhibits and having assigned reasons for judgment, rendered judgment of "Guilty as Charged". Motion for a New Trial and Motion in Arrest of Judgment filed by defense Counsel. The Court to notify the Clerk of Court of the date on which he will rule on said Motions.

Helen Sullivan, Minute Clerk.

[fol. 32] Feb. 28, 1963.

Motion for a New Trial and Motion in Arrest of Judgment overruled by the Court. Bills of Exceptions reserved, as noted by Stenographer. Defendant waived all legal delays and was thereupon sentenced to pay a fine of $1,000.00 or, in default of payment of said fine, to serve four (4) months in the Parish Prison. Bills of Exceptions No. 1, No. 2, No. 3, No. 4, No. 6, No. 8, No. 9, No. 10, No. 11, No. 15, No. 16, No. 17, No. 18, No. 20, No. 21, No. 22, No. 23, No. 24, No. 25 and No. 26, with Per Curiams attached thereon, were filed. Motion for a suspensive appeal, filed by Defense Counsel, granted by the Court. Returnable date March 28, 1963. Defendant discharged on his bond in amount of $500.00 on his own recognizance.

Helen Sullivan, Minute Clerk.

[fol. 33]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

PETITION OF THE HONORABLE JUDGES OF THE CRIMINAL DISTRICT COURT TO THE HONORABLE JACK P. F. GREMILLION, ATTORNEY GENERAL, STATE OF LOUISIANA, BATON ROUGE, LOUISIANA—Filed November 13, 1962.

Malcolm V. O'Hara, George P. Platt, Edward A. Haggerty, Jr., Thomas M. Brahney, Jr., J. Bernard Cocke, Oliver Schulingkamp, Shirley G. Wimberly, and Bernard J. Bagert, each being a duly elected Judge of the Criminal District Court in and for the Parish of Orleans do hereby petition the Honorable Jack P. F. Gremillion, Attorney General, of the State of Louisiana, as follows:

I.

That the aforementioned Judges on Thursday, the 8th day of November, 1962 did cause to be executed with Edward A. Haggerty, Sr., Clerk of the Criminal District Court for the Parish of Orleans, an affidavit bearing Number 177-364 of the Criminal District Court, certified copy of which is hereto attached and made a part hereof, charging the District Attorney for the Parish of Orleans, Jim Garrison, with the crime of Defamation, which is set out in Article 14:47 of the Louisiana Revised Statutes;

II.

That thereafter and pursuant to the duties incumbent upon the Clerk of the Criminal District Court he did accept, record, and file in said office the aforementioned affidavit;

III.

That immediately after said affidavit was filed in the office of the Clerk of the Criminal District Court, the said Jim Garrison, District Attorney for the Parish of Orleans, through his First Assistant District Attorney, Mr. Frank Klein, did dismiss the said affidavit which dismissal is evidenced by the inscription on the face thereof; and in addi-

[fol. 34] tion thereto did appear before said George P. Platt, Judge of Section "B", and on the same day moved in open court for the recordation in the minutes of the dismissal of the said affidavit all of which is evidenced by a certified copy of the motion attached hereto and made a part hereof;

IV.

That the said dismissal of your petitioners' affidavit by the said Jim Garrison has had the effect of denying your petitioners their day in court.

Additionally petitioners allege that in view of the serious nature of the unfounded complaints lodged against petitioners by Jim Garrison in the public press that the interest of the State and the people at large demand that the matter be heard publicly in the trial of the case.

Petitioners allege that such defamatory utterances strike at the very heart of the entire judicial system as well as representative democratic government and is therefore of the greatest public concern.

V.

Article 7, Section 56 of the Constitution of Louisiana, 1921, reads in part as follows:

"• • • They (attorney general and his assistants), or one of them, shall attend to, and have charge of all legal matters in which the State has an interest, or to which the State is a party, with power and authority to institute and prosecute or to intervene in any and all suits or other proceedings, civil or criminal, as they may deem necessary for the assertion or protection of the rights and interests of the State. They shall exercise supervision over the several district attorneys throughout the State, and perform all other duties imposed by law." • • •

[fol. 35] L.S.A.—R.S. 15:23 reads as follows:

"The attorney-general and his assistants shall have power and authority to institute and prosecute, or to intervene in any proceeding, civil or criminal, as they

may deem necessary for the assertion or protection of the rights and interests of the State; and furthermore, the attorney-general shall exercise supervision over all of the district attorneys throughout the state and shall represent the state in criminal cases on appeal."

VI.

That the offense with which the said Jim Garrison was charged by your petitioners has its jurisdiction in the Parish of Orleans of which the said Jim Garrison is the District Attorney.

That the interest of public justice will be served by the Attorney General taking charge of this prosecution under the aforesaid provisions of the Constitution and statutory law.

Therefore Your Petitioners considering the foregoing allegations and the applicable law, hereby direct, authorize and empower the Honorable Jack P. F. Gremillion, Attorney General for the State of Louisiana to comply with the Constitutional and statutory mandates cited herein, and to proceed with the prosecution of the said Jim Garrison for the crime of Defamation, all in accordance with his oath of office and the Constitution and laws of the State of Louisiana.

New Orleans, Louisiana, 12th day of November, 1962.

Malcolm V. O'Hara; George P. Platt; Edward A. [fol. 36] Haggerty, Jr.; Thos M. Brahney, Jr.; J. Bernard Cocke; Oliver P. Schulingkamp; Shirley G. Wimberly; Bernard J. Bagert.

CERTIFICATE OF SERVICE (omitted in printing).

NOTE: The certified copy of the affidavit, together with the Motion to Dismiss Affidavit, in Case No. 177-364, referred to in the above and foregoing Motion of the Honorable Judges of the Criminal District Court to the Honorable Jack P. F. Gremillion, Attorney General, is annexed hereto and contained in Exhibit Envelope No. 1.

[fol. 37] [File endorsement omitted]

[fol. 38] IN SUPREME COURT OF LOUISIANA

Filed November 13, 1962

V. J. Courville, Clerk.

Filed Nov. 14, 1962
Clerk's Office, Criminal
District Court

Dan B. Haggerty, Chief Clerk.

ORDER APPOINTING THE HONORABLE WILLIAM H. PONDER AS JUDGE AD HOC—November 13, 1962

Considering the above petition,

It Is Ordered by the court that the Honorable William H. Ponder, Judge of the Eleventh District Court, composed of the parishes of DeSoto and Sabine, be, and he is hereby, appointed, authorized, and directed to sit as Judge ad hoc for the Criminal District Court for the Parish of Orleans, in case No. 177-418 of the docket of the Criminal District Court for the Parish of Orleans, entitled State of Louisiana versus Jim Garrison, and to do and perform all necessary judicial functions in relation thereto:

It Is Further Ordered that this order shall in no way deprive the Honorable William H. Ponder of the authority to perform any and all functions that he may have occasion to perform as judge of the Eleventh Judicial District, or as a judge of any court to which he may previously have been assigned by any order of this court.

This order is effective immediately, and a copy thereof is to be served not only upon the said Judge William H. Ponder, which shall be his authority to act therein, but also upon the clerk of the Criminal District Court for the Parish of Orleans, and the clerks of the respective courts over which Judge Ponder presides in the Eleventh Judicial District.

Jno B. Fournet, Chief Justice of the Supreme Court of the State of Louisiana.

New Orleans, Louisiana
November 13, 1962.

Clerk's Certificate to foregoing paper (omitted in printing).

[fol. 39] CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

MOTION OF ATTORNEY GENERAL TO RECUSE JIM GARRISON—November 13, 1962

On motion of Jack P. F. Gremillion, Attorney General, duly elected, qualified, and acting Attorney General for the State of Louisiana, and on suggesting to the Court that the defendant herein is the duly elected District Attorney for the Parish of Orleans and has a personal interest adverse to that of the prosecution,

It is ordered by the Court that the said Jim Garrison, District Attorney for the Parish of Orleans, do show cause on the day of why he should not be recused.

....., Judge ad hoc, Criminal District Court for the Parish of Orleans, State of Louisiana.

New Orleans, Louisiana
13th day of November, 1962

[File endorsement omitted]

[fol. 40] IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

INFORMATION—November 13, 1962

Jack P. F. Gremillion, Attorney General for the State of Louisiana, who in the name and by the authority of the said State, prosecutes, in this behalf, in proper person comes into the Criminal District Court for the Parish of Orleans, in the Parish of Orleans, and gives the said Court here to understand and be informed that one Jim Garrison

late of the Parish of Orleans, on the 2nd day of November in the year of Our Lord, one thousand nine hundred and sixty-two with force and arms in the Parish of Orleans aforesaid, and within the jurisdiction of the Criminal District Court for the Parish of Orleans, did wilfully, unlawfully and maliciously defame each, George B. Platt, Judge of Section "B", Criminal District Court for the Parish of Orleans and the presiding judge thereof, and one Malcolm V. O'Hara, Judge of Section "A" of the Criminal District Court for the Parish of Orleans, one Edward A. Haggerty, Jr., Judge of Section "C", Criminal District Court for the Parish of Orleans, one Thomas M. Brahney, Jr., Judge of Section "D" of the Criminal District Court for the Parish of Orleans, one J. Bernard Cocke, Judge of Section "E", Criminal District Court for the Parish of Orleans, one Oliver P. Schulingkamp, Judge of Section "F", Criminal District Court, for the Parish of Orleans, one Shirley G. Wimberly, Judge of Section "G", Criminal District Court for the Parish of [fol. 41] Orleans, and Bernard J. Bagert, Judge of Section "H", Criminal District Court for the Parish of Orleans, which said judges constitute all the entire bench of the Criminal District Court for the Parish of Orleans, and did publish and express in the public press of the City of New Orleans to persons other than the parties defamed which said publication and expressions are recited herein below of certain things which tend to expose to hatred, contempt and ridicule and deprive such persons of their benefit of public confidence and social intercourse. The said publication and expressions being contained in the following news item reproduced from the New Orleans States-Item, an afternoon daily newspaper published in the City of New Orleans, Parish of Orleans, published on November 2nd, 1962 which reads as follows, to-wit:

"TEXT OF GARRISON STAND ON JUDGES

"The statement by District Attorney Jim Garrison on his feud with the criminal district court judges follows:

"'Apparently the judges have called in all their reserves. (A reference to the joint meeting of all criminal court judges today.)

"'Whatever their resulting statement turns out to be, I doubt if the facts will be much more accurate than those in Judge (William J.) O'Hara's statement.

"'I will cite some glowing examples of misrepresentation of facts.

"'First of all is the attempt made to counterattack by imputing to this office the responsibility for the overcrowded conditions of the Parish Prison.

"'Judge O'Hara makes the fantastic implication that somehow the system of operation of my office has created this condition. The short reply to this untruth is that the Parish Prison was vastly overcrowded the day we were sworn in.

"'There was not only a backlog of untried cases then . . . there has been for years.

[fol. 42] "'For example, the judge admits in his own statement that the (Leon D.) Hubert office inherited a backlog of 3500 cases. When we came into office in May, the backlog had risen to approximately 4600 cases.

"'inasmuch as the judges have been the only continuing caretakers of the criminal courts operations over the years, it is pretty obvious where the real responsibility lies for the revised backlog of untried cases.

"'District attorneys come and go every four years but the Judges and the backlog always seem to be here.

"'Furthermore, I am sure that Judge O'Hara knows that no district attorney's office in years has pushed more cases to trial than we have in our first six months of office.

"'We have prosecuted approximately 40 jury trials already—despite the fact that the winter term of the courts has just begun.

"'An objective study by an outside agency will reveal that this is at least as many trials as were held the last two years prior to our arrival.

"'To go on to another misrepresentation, Judge O'Hara has made the incredible statement that we have pulled our investigators away from the courts. The truth is that our investigators are with the trial assistant, invariably within arm's reach of the assistant, in full sight of the judge in every courtroom throughout every trial.

"'Obviously this is nothing more than a petulant slap at our use of investigators to uncover vice conditions in the city—an operation with which the judges have shown a remarkable lack of sympathy.

"'As a matter of fact, so opposed have the judges been to our vice investigations that they completely blocked us off from our Bourbon Street investigations c B-drinking and other forms of vice.

"'This was accomplished by the judges tying the purse strings of the district attorney's fines and fees and informing me that no further money could be used in the investigation of any vice conditions.

"'The judges have specifically directed that the district attorney's office 'should not investigate anything' and informed me that they would allow me to use no further money from my large fines and fees—presently $40,000—for any form of vice investigation.

[fol. 43] "'In certain areas where we have spent borrowed money to keep operating against vice—in major handbook operations as well as in B-drinking cases—the judges have instructed me that this money will not be replaced out of fines and fees. I must pay this out of my own pocket.

"Again the message from the judges is clear. They do not want the district attorney's office to investigate anything.

"'Interestingly enough, had I let them stop me in August as they attempted to do, I would not have been able to keep the pressure on the Canal street B-joints, which ultimately resulted in the closing of all of them.

"'I succeeded in keeping up the pressure on these places, despite the judges' tying of the purse strings, by my personal loan from the Bank of New Orleans.

"'The judges have now made it eloquently clear where their sympathies lie in regard to aggressive vice investigations by refusing to authorize use of the DA's funds to pay for the cost of closing down the Canal street clip joints.
closed them, despite their (the judges') obvious attempts to block me, they now seek to slap the DA on the wrist by making him pay for this successful operation out of his pocket.

"'Again the message is clear: 'Don't rock the boat, son. You are not supposed to investigate anything.'

"This raises interesting questions about the racketeer influences on our eight vacationminded judges. This is a matter regarding which I will have more to say a little later.

"'To go on to another misrepresentation of Judge O'Hara's statement, I am sure that he well knows that we did not throw out the trial preparation system of Mr. Hubert.

"'That was junked four years ago by the preceding DA's office and there was no comment by Judge O'Hara about its disappearance throughout the four years.

"'As a matter of fact, this office gives special attention to the preparation of trial and has adopted a number of the excellent trial preparations of the Hubert era.

"'To give a specific example, our office now is in the process of printing for distribution to every criminal defense attorney and every court the trial docket for the month to come.

[fol. 44] "'Our setting of particular cases on particular dates is so arrived at to avoid such conflicts as having cases in different courts by defendants or an attorney on the same day.

"'Interestingly enough, this program was abandoned by the previous DA's administration, and again there was not a word from Judge O'Hara.

"'O'Hara has now developed—subsequent to his retirement—a concern for the efficient operation of the trial dockets.

"'Actually, the time for Judge O'Hara to be active in his concern for the district attorney's office was during the preceding four years when there was a complete breakdown of vice prosecution and prosecution of cases in every area.

"'So complete was this breakdown that in the last several years there were almost no trials of any kind for commercialized vice. The judge at no time expressed any concern for this breakdown of the prosecution office.

"'The first discernible interest on their part with regard to the district attorney's handling of vice cases arrived the past summer when it became apparent that this office was achieving success in its efforts to eliminate the B-drinking racket in New Orleans.'

"'This is when, to my astonishment, I suddenly received instructions—through Judge O'Hara himself, speaking for the rest of the judges—that I could no longer spend any money out of fines and fees for anything.

"Since this was in August—there was not to be an en banc meeting until October when all the judges returned from their vacations—this would have had the effect of blocking our vice investigations. This is when I borrowed money from the bank and continued to investigate B-drinking in spite of the judges.

"'If the judges would show half as much interest in solving dangerous overcrowded conditions of the Par

ish Prison, and this overcrowding has been present for years not just the last few weeks, as they have shown in their successful attempts at completely blocking the anti-B-drinking operations of my office, the Parish Prison problem would be ended over night.

"The efficiency and dispatch with which the judges of the present court stopped my undercover investiga-[fol. 45] tions of B-drinking and the resolve which they demonstrated in their uniform opposition to any continued vice investigation by this office would gladden the heart of any efficiency expert.

"It is unfortunate that there is no comparable interest on their part with regard to the problem of inmates awaiting trial month after month in the Parish Prison.

"'It is incredible that in this country in 1962 that a man could wait 19 months before his case is disposed of, during which period the judge enjoyed over 300 days vacation.

"'There are now approximately 520 prisoners awaiting trial out of a prison population of 758.

"'I think this is an outrageous condition which should be answered not by petulant words by the judges but by action—to immediately increase the number of trial days of this court so that the men can be brought to a speedy trial."

contrary to the form of the Statute of the State of Louisiana in such case made and provided and against the peace and dignity of the same.

Jack P. F. Gremillion, Attorney General for the State of Louisiana.

[fol. 46]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

No. 177-418

Section "C"

[Title omitted]

MOTION OF JIM GARRISON TO RECUSE THE HONORABLE WILLIAM H. PONDER, TRIAL JUDGE —Filed December 4, 1962

On Motion Of Jim Garrison, defendant herein, charged with the crime of Defamation, and on respectfully suggesting to this Honorable Court that the Honorable William H. Ponder, Trial Judge ad hoc, should be recused from presiding as such Trial Judge on the trial of your above named defendant for the following reasons, to-wit:

1.

That the Honorable P. F. Jack Gremillion, Attorney General for the State of Louisiana, who prosecutes this case in the name of the State of Louisiana, has publicly stated in the public press and otherwise, his belief that the integrity of the entire judiciary of the State of Louisiana is an issue in this case and has thus announced his intention of making the integrity of the Louisiana judiciary an issue in the trial thereof; that the said utterances and the proposed trial have had and will have the effect of making the entire judiciary of the State of Louisiana an interested party to this case within the meaning of the recusation statutes of the State of Louisiana.

2.

That the constitutional and statutory provisions of the State of Louisiana authorizing the arbitrary appointment by the Louisiana State Supreme Court of a trier of fact for a particular case, are unconstitutional and null and void as violative of the due process provisions of the Four-

teenth Amendment, and that the appointment of the said Honorable William H. Ponder, under color of authority [fol. 47] of the said provisions of the Louisiana State Constitution and Revised Statutes, is therefore null and void and of no force and effect.

Wherefore, your defendant and mover respectfully prays that the Honorable William H. Ponder, Trial Judge ad hoc herein, recuse himself from any further consideration in this matter.

Jim Garrison, Defendant and Mover;

Donald V. Organ, Attorney for Defendant and Mover.

Duly sworn to by Jim Garrison, jurat omitted in printing.

[File endorsement omitted]

[fol. 48]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

APPLICATION FOR BILL OF PARTICULARS
—Filed December 4, 1962

Now Into This Honorable Court comes Jim Garrison, defendant, in the above entitled and numbered cause, and before arraignment pleads that he is unable to answer to the information, and pleads that he is unable to properly prepare his defense herein until he is furnished with a Bill of Particulars upon the following, to-wit:

1.

What are the exact words, phrases and/or sentences of the statement set forth in the Bill of Information that are alleged to be defamatory as to the judges named in the said Bill of Information?

2.

What are the exact words, phrases and/or sentences contained in the said quoted statement that tend to expose to hatred, contempt or ridicule the judges of the Criminal District Court named in the said Bill of Information, or to deprive them of their benefit of public confidence and social intercourse?

3.

Does the State contend that the statement of the defendant set forth in the Bill of Information contains any allegations of fact which are not true?

4.

If the answer to Paragraph 3 above is in the affirmative, please set forth the exact words, phrases, and/or sentences containing allegations of fact which are alleged by the [fol. 49] State to be untrue.

Wherefore, your defendant prays that the State of Louisiana through the Honorable P. F. Jack Gremillion, the Attorney General, be ordered by the Court to furnish the said Bill of Particulars above requested, and that service of same be made upon your defendant.

And your defendant prays for all such other relief to which he is or may be entitled.

Jim Garrison, Defendant;

Donald V. Organ, Attorney for Defendant.

Duly sworn to by Jim Garrison, jurat omitted in printing.

[fol. 50] Let The Honorable P. F. Jack Gremillion, Attorney General for the State of Louisiana, be, and he is hereby ordered to furnish the defendant, Jim Garrison, the particulars requested in the foregoing application within ..... days from the date hereof.

New Orleans, Louisiana, this ..... day of ..... 1962.

.....
Judge

[File endorsement omitted]

[fol. 51]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

DEMURRER AND MOTION TO QUASH—Filed December 4, 1962

Now Into This Honorable Court comes Jim Garrison, defendant in the above entitled and numbered cause, and before arraignment, and protesting that he is not guilty of the offense set out in the Bill of Information herein, says that the said Information and the matters therein are, as therein alleged and set forth, not sufficient in law to compel him, the said Jim Garrison, to answer thereto, for the following reasons, to-wit:

1.

That the statement set forth in the Bill of Information attributed to the defendant herein, Jim Garrison, contains no allegations of fact which are defamatory, or which could through any reasonable interpretation, tend to expose to hatred, contempt or ridicule or to deprive of their benefit of public confidence and social intercourse any of the judges of the Criminal District Court therein named as the persons defamed.

2.

That the statement set forth in the Bill of Information affirmatively reveals itself to be a comment on the conduct of persons in respect to public affairs and as such protected by a qualified privilege; that despite the allegation of malice contained in the said Bill of Information herein, the state-

ment attributed to the defendant affirmatively shows the absence of malicious motive; that the said statement shows [fol. 52] the utterances contained therein to be in response to a previous public criticism by one Judge William O'Hara, and in defense of the defendant's performance of his duties as District Attorney in combating organized vice operations in the City of New Orleans.

3.

That to hold the statement set forth in the Bill of Information to be a violation of Revised Statute 14:47 or to interpret the said R.S. 14:47 defining the crime of defamation so as to include within the scope thereof the statement set forth in the Bill of Information in this case would violate the provisions of the First Amendment of the Constitution of the United States prohibiting abridgment of freedom of speech as the said amendment is made applicable to the State of Louisiana through the Fourteenth Amendment of the United States Constitution.

Wherefore, the defendant prays judgment and that by the Court here he may be dismissed and discharged of the said Information.

Jim Garrison;

Donald V. Organ, Attorney for Defendant.

[fol. 53] *Duly sworn to by Jim Garrison, jurat omitted in printing.*

[File endorsement omitted]

[fol. 54]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

MOTION FOR TRIAL BY JURY AND ORDER THEREON
—Filed December 5, 1962

Now Into Court through the undersigned counsel comes Jim Garrison, made defendant herein and without waiving or relinquishing any rights or relief sought under pleadings previously filed herein but on the contrary re-urging and reiterating all of the contentions contained in the said prior pleadings moves that the merits of this case be tried by jury and that this case, subject to a determination of the pleadings previously filed herein, be assigned for trial during the jury term in accordance with the rules of this Court for the following reasons, to wit:

I

That the provisions of Article 7, Section 41 of the Louisiana State Constitution authorizing trial by the judge alone in cases of misdemeanor is unconstitutional, null and void in that the said State Constitutional provision is in violation of the Sixth and Fourteenth Amendments of the United States Constitution, depriving petitioner of his right to trial by jury and depriving him of due process of law.

II

That in the alternative defendant alleges that any issue involving the determination of Constitutional rights in general and the right of freedom of speech in particular must be tried by jury under the requirements of the above mentioned United States Constitutional provisions; that the trial of this case will necessarily involve a determination as to certain fundamental Constitutional rights of the defen-
[fol. 55] dant and that the trial of this case without a jury would serve to deny to defendant due process of law under

the Sixth and Fourteenth Amendments of the United States Constitution.

Wherefore, the defendant prays that the Attorney General of the State of Louisiana be ordered to show cause on a date and at a time to be fixed by this Honorable Court why the merits of this case, subject to a determination of previous pleadings herein, should not be assigned for trial during the jury term of this Court and set down for trial by jury.

Jim Garrison;

Donald V. Organ, Attorney for Defendant.

[fol. 56] *Duly sworn to by Jim Garrison, jurat omitted in printing.*

ORDER

The foregoing motion and allegations contained therein considered, it is ordered that the Honorable P. F. Jack Gremillion, Attorney General for the State of Louisiana, be, and he is hereby ordered to show cause on the day of 1962, why this case should not be placed on the jury docket of this Court to be set down for trial by jury.

New Orleans, Louisiana
This ..... Day of ....., 1962.

.....
Judge

[File endorsement omitted]

[fol. 57]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

ANSWER TO APPLICATION FOR BILL OF PARTICULARS —Filed December 11, 1962

And now into Court comes the State of Louisiana through its undersigned counsel, and in answer to the Bill of Particulars, respectfully shows:

I.

The State will rely upon the entire article as quoted in the Bill of Information.

II.

The State will rely upon the entire article as quoted in the Bill of Information.

III.

The State will contend that the statement of the defendant set forth in the Bill of Information constitutes malice in law and also malice in fact.

IV.

The entire expression and publication as quoted in the Bill of Information will be used as the basis on the trial as the alleged violation of the statute. The State will also prove the allegation of fact that the said Statement was made and published by the said defendant on the date set forth in the indictment.

Wherefore, The State prays that this Answer to the Bill of Particulars be held sufficient in law.

State of Louisiana, By: Jack P. F. Gremillion, Attorney General, State of Louisiana;

[fol. 58] M. E. Culligan, Assistant Attorney General;
John E. Jackson, Jr., Assistant Attorney General;
L. K. Clement, Jr., Assistant Attorney General;
Weldon A. Cousins, Assistant Attorney General;
John M. Currier, Assistant Attorney General;
Henry J. Roberts, Jr., Assistant Attorney General;
William P. Schuler, Assistant Attorney General.

[File endorsement omitted]

[fol. 59] IN CRIMINAL DISTRICT COURT
PARISH OF ORLEANS, LOUISIANA

[Title omitted]

ANSWER TO DEMURRER AND MOTION TO QUASH—
Filed December 11, 1962

There has been filed herein a Demurrer and Motion to Quash.

The context of the document is actually a defense or plea in mitigation and presents no question of law that could be disposed of at this hearing. The fact that the defendant may have a good defense is not sufficient grounds to quash an indictment.

R.S. 15:286 provides:

> "Any defect apparent upon the face of the indictment, or any defect fatal to the validity of the proceedings may be set up in a motion to quash the indictment, whether such fatal defect be one apparent upon the face of the record, or be such as can be established only by the production of evidence."

Generally speaking, where a bill of information fully informs the accused of the nature and cause of the accusa-

tion, it cannot be deemed to be defective. The Louisiana Supreme Court, in the case of State versus Masino, 214 La. 744, 38 So. 2d 623 (1949) sets forth the constitutional requirements a bill of information would have to meet, and we quote:

> "Does this indictment inform the court what offense is being charged, so that the proof will be restricted solely to the crime charged; and is the indictment sufficient on its face to support a plea of former jeopardy?"

The bill of information filed herein is what is commonly referred to as a long form indictment or information which follows the language of the statute (R.S. 14:47) and [fol. 60] the specific acts on which the charge is based are set forth in the bill of information.

It is submitted that the bill of information is proper on its face and the motion to quash does not allege any defects: Therefore, we are treating the document filed herein and entitled, "Demurrer and Motion to Quash" also as a demurrer.

Although we will answer the allegations specifically, it is appropriate to point out that there is no allegation that the statute in question (R.S. 14:47) is unconstitutional vel non and that the only allegation anywise dealing with a constitutional question is contained in Paragraph 3 of accused's "Demurrer and Motion to Quash."

I.

In support of Paragraph I of this document, the Memorandum of Authorities for the defendant in support thereof cites Wharton's Criminal Law and Procedure v. II, P. 70, Section 884 (1957), and while we agree with the general proposition that in a prosecution of criminal defamation that the words contained in the statement, which is the basis of the prosecution, must be given an ordinary meaning, determined from an examination of the statement as a whole, in light of the surrounding circumstances, we fail to see where this statement offers the defendant any sol-

ace. However, it is noted that in Section 885 of this text, the author had the following to say:

> "Either under the common law or by virtue of statute, a great variety of statements have been held to be criminally defamatory, such as those imputing adultery, bribery, commission of a crime, conviction of crime, criminal misconduct in office, dishonesty, drunkenness, graft, hypocrisy, incompetency in one's [fol. 61] trade or profession, insolvency, financial irresponsibility, misconduct as a juror, seduction, or unchastity. It has also been suggested that sending a letter to a married woman, soliciting sexual intercourse, may constitute a criminal libel.
>
> Many enactments denounce as a libel any publication that reflects upon the solvency of a bank or a corporation.
>
> Intemperate reflections on the proceedings of courts of justice, when bringing public justice into contempt, are libelous. It is also libelous to charge a judge or jury with malice or corruption. It is libelous even to publish a correct account of judicial proceedings if accompanied with comments and insinuations tending to asperge a man's character. It is not libelous, however, if the report is fair and accurate."
>
> See also Yankwich, "It's Libel or Contempt if you Print it." P. 405-408.

Defendant contends that the bill of information as written does not charge an offense under Article 285, Code of Criminal Procedure, however, we urge that a complete reading of the text of defendant's statement, as set forth in the bill of information in its entirety, can lead only to one conclusion, that is, that such statement constitutes a violation of R.S. 14:47.

II.

In Paragraph II of defendant's Demurrer and Motion to Quash, he apparently claims a qualified privilege under Article 49 of the Criminal Code and while we think this is

undoubtedly a matter of defense, we have no quarrel with the statement in his memorandum of authorities that State versus O'Donnell, 141 La. 887, 75 So. 811, adequately and correctly states the law applicable in the instant case. It will be noted that in the O'Donnell case, the Court stated that comment on the well-known or admitted facts is a very different thing from the assertion of unsubstantiated facts for comment. This in essence is what the defendant is accused of, i.e., the expression and [fol. 62] publication of untrue statements as distinguished from the comment on admitted facts. In fact, the O'Donnell case is one of the Louisiana cases which was incorporated into the provisions of R.S. 14:47 as can be seen from the reporter's note contained thereunder.

Any special circumstances, surroundings or conditions which would afford defendant relief under Article 49 of the Code of Criminal Procedure would be a question of proof that would have to be established at the time of trial by the introduction of evidence in the usual manner.

III.

The defendant contends that were he to be convicted of defamation for the statements set out in the bill of information filed herein, he would be deprived of his rights to freedom of expression guaranteed by Article 1, Section 3 of the Louisiana Constitution, as follows:

> "No law shall ever be passed to curtail or restrain the liberty of speech or of the press; any person may speak, write and publish his sentiments on all such subjects, *being responsible for the abuse of that liberty.*" (Emphasis ours.)

Also by the due process clause of the Fourteenth Amendment and the First Amendment to the United States Constitution.

First, we would like to point out that all of the cases cited by defendant in support of this proposition are contempt cases which are clearly distinguishable from a criminal defamation proceeding.

Under both the state and federal jurisprudence, the law is clear that libelous utterances are not within the area of constitutionally protected speech.

Roth v. U. S. Cal. and N.Y. 77 Supreme Court 1304, 354 U.S. 476; Kvos, Inc. v. Associated Press 13 Fed. Supp. 910. [fol. 63] Madison v. Bolton, 234 La. 997, 102 So. 2d 443 (See Footnote 6), Deshotel v. Thistlethwaite 240 La. 12, 121 So. 2d 222, Kennedy v. Item Co., Inc. 213 La. 347, 34 So 2d 886.

Any special circumstances or facts that would take defendant's utterances out from under the general provision of law cited above would have to be facts adduced at the trial and cannot properly be urged on a Demurrer or Motion to Quash.

The record itself as presently constituted is devoid of any facts or circumstances that would make the above rule of law inapplicable and if the defendant intends to present such facts or show such circumstances, the proper time and place would be at the trial on the merits of this matter.

To summarize, our appreciation of the law is that the bill of information does not show on its face that he is entitled to a qualified or absolute privilege and for this reason, a Motion to Quash or Demurrer is not applicable. A Motion to Quash or Demurrer would lie only if the privilege asserted by the defendant was apparent on the face of the record and the facts were not in dispute as then only a question of law would be before the court for determination.

State of Louisiana, By: Jack P. F. Gremillion; M. E. Culligan, Assistant Attorney General; John E. Jackson, Jr., Assistant Attorney General; L. K. [fol. 64] Clement, Jr., Assistant Attorney General; Weldon A. Cousins, Assistant Attorney General; John M. Currier, Assistant Attorney General; Henry J. Roberts, Jr., Assistant Attorney General; William P. Schuler, Assistant Attorney General.

[File endorsement omitted]

[fol. 65]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

ANSWER TO MOTION FOR TRIAL BY JURY—
Filed December 11, 1962

Now into Court comes the State of Louisiana through undersigned counsel and in answer to defendant's motion for Trial by Jury, respectfully shows:

1.

Article 47 is a misdemeanor and as stated by defendant's counsel, all misdemeanors under Louisiana constitutional provision are triable by the Judge alone.

Such provision does not violate the 6th or 14th Amendment of the United States Constitution as he has no State constitutional right to a jury trial nor any Federal constitutional right to a trial by Jury of a misdemeanor in a State Court.

2.

There is no constitutional (State or Federal) right to a trial by Jury of a misdemeanor in a State Court. All constitutional rights of defendant can be urged by the defendant and tried by the Judge alone, and will not deny defendant due process of law under the sixth and fourteenth amendments to the United States Constitution.

Wherefore, the State prays that defendant's motion be dismissed and this case be tried by the Judge without any jury.

State of Louisiana, By Jack P. F. Gremillion, Attor-
[fol. 66] ney General; M. E. Culligan, Assistant Attorney General; John E. Jackson, Jr., Assistant Attorney General; Weldon A. Cousins, Assistant Attorney General; John M. Currier, Assistant Attorney General; Henry J. Roberts, Jr., Assistant Attorney General; William P. Schuler, Assistant Attorney General.

[File endorsement omitted]

[fol. 67]

IN CRIMINAL DISTRICT COURT
PARISH OF ORLEANS, LOUISIANA

[Title omitted]

MEMORANDUM IN SUPPORT OF ANSWER FILED TO DEFENDANT'S MOTION FOR TRIAL BY JURY—Filed December 11, 1962

This motion was filed in this Court on December 5th although the trial judge had set the latest date for filing of any technical pleadings as December 4th the fact of which the defendant was fully apprised in person and representing himself in proper persona.

The right of freedom of speech is not an absolute.

The 6th amendment has no application to a State prosecution and does not entitle anyone to a jury trial in a State Court of a misdemeanor.

See *State* v. *Kraft*, 214 La. 351, 37 So. 2d 815, 816.

The 6th amendment is not encompassed in the 14th amendment and the 14th amendment has no application to prosecutions in State Courts of misdemeanors nor has there ever been any holding that a state must grant jury trials.

In *Hurtado* v. *California*, 110 U.S. 516, 28 L.Ed. 232, 4 Sup. Ct. Rep. 111, 292, it was held "due process of law" in the 14th amendment did not require an indictment by a Grand Jury in a prosecution by a State for murder.

In *Maxwell* v. *Dow*, 176 U.S. 581, 44 L. Ed. 597, 20 Sup. Ct. Rep. 448, 494, it was also held, the trial of a person in a State Court, accused as a criminal, by a jury of only eight persons instead of 12, did not deprive the convicted criminal [fol. 68] of due process. See also *Brown* v. *New Jersey*, 175 U.S. 172, 44 L. Ed. 119, 20 Sup. Ct. Rep. 77.

In all these cases it was held that the several rights mentioned in them were not those fundamental ones which were protected by the Federal Constitution, when presented for review under State prosecutions.

That the 6th amendment does not apply to State Courts was held in *West* v. *Louisiana*, 194 U.S. 258, 264, 48 L. Ed. 956 and in *State* v. *Kraft*, 214 La. 351, 37 So. 2d 815, 816, the Louisiana Supreme Court held:

"Amendments V and VI of the Constitution of the United States, are applicable only to prosecutions in a Federal Court, and not to prosecutions in a State Court."

Respectfully submitted,

State of Louisiana, By Jack P. F. Gremillion, Attorney General, State of Louisiana; M. E. Culligan, Assistant Attorney General; John E. Jackson, Jr., Assistant Attorney General; Weldon A. Cousins, Assistant Attorney General; Henry J. Roberts, Jr., Assistant Attorney General; William P. Schuler, Assistant Attorney General; L. K. Clement, Jr., Assistant Attorney General; John M. Currier, Assistant Attorney General.

[File endorsement omitted]

[fol. 69]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

Proposed Propositions of Law Nos. 1-17

PROPOSITION OF LAW NO. 1

The accused is presumed to be innocent in every criminal proceeding.

Granted .....

Rejected .....

.....

Judge

[fol. 70]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

PROPOSITION OF LAW NO. 2

In order to convict the accused of criminal defamation the trial judge must be convinced of his guilt beyond a reasonable doubt.

Granted .....

Rejected .....

.....

Judge

[fol. 71]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

PROPOSITION OF LAW NO. 3

In prosecutions for criminal defamation, the words contained in the statement which is the basis of the prosecution must be given their ordinary meaning, determined from an examination of the statement as a whole, in the light of the surrounding circumstances.

Granted .....

Rejected .....

.....

Judge

[fol. 72]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

PROPOSITION OF LAW NO. 4

Where the defamatory statement is a comment upon the conduct of a person in respect to public affairs and is made in the reasonable belief of its truth, the statement is qualifiedly privileged, and to obtain a conviction under these circumstances the State must prove actual malice on the part of the accused when he made the statement, regardless of its truth or falsity. Art. 49, La. Crim. Code.

Granted .....

Rejected .....

.....

Judge

[fol. 73]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

PROPOSITION OF LAW NO. 5

Where the facts in a criminal defamation case are not disputed, the question of privilege is purely one of law. *State* v. *Lambert,* 188 La. 968, 178 So. 508.

Granted .....

Rejected .....

.....

Judge

[fol. 74]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

PROPOSITION OF LAW NO. 6

Malice means hatred, ill-will, or hostility to another. It characterizes all acts done with an evil disposition, a wrong and unlawful motive and purpose, the wilful doing of an injurious act without lawful excuse. Clark and Marshall, Crimes, p. 76, sec. 48 (1952).

Granted .....

Rejected .....

.....

Judge

[fol. 75]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

PROPOSITION OF LAW NO. 7

To prove actual malice the State must show, by extrinsic evidence of personal ill feeling or by intrinsic evidence such as the exaggerated language, mode and extent of the publication, that the accused acted through hatred, ill will, and a wanton desire to injure. *State* v. *Lambert*, 188 La. 968, 178 So. 508.

Granted .....

Rejected .....

.....

Judge

[fol. 76]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

PROPOSITION OF LAW NO. 8

A comment is the expression of the judgment passed upon certain alleged facts by one who has applied his mind to them, and who, while so commenting, assumes that such allegations of fact are true. Where the accused sets out the facts of a situation correctly, and then draws a derogatory inference from those facts, stating it as his inference, this inference is a comment and is qualifiedly privileged. *State* v. *O'Donnell,* 141 La. 887, 75 So. 811.

Granted .....

Rejected .....

.....

Judge

[fol. 77]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

PROPOSITION OF LAW NO. 9

Fair comment in the law of defamation is a comment which is either true; or which, if false, expressed the real opinion of its author, such opinion having been formed with a reasonable degree of care and on reasonable grounds. Clark and Marshall, Crimes, p. 628, sec. 434 (1952).

Granted .....

Rejected .....

.....

Judge

[fol. 78]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

PROPOSITION OF LAW NO. 10

Public officials may be regarded as inviting comment by any member of the public, and a right of fair comment exists, for which there is no criminal liability, as long as the critic acts in good faith, limits himself to a comment on the true facts, confines himself to criticism of that matter in which the public is interested, and confines the publication of his criticism to the area in which the defamed person has made his actions public. Wharton's Criminal Law and Procedure, v. II, p. 770, sec. 899 (Anderson, 1957).

Granted .....

Rejected .....

.....

Judge

[fol. 79]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

PROPOSITION OF LAW NO. 11

Publications made in the discharge of a public duty under authority of law are privileged. Burdick, Law of Crime, v. 3, p. 166, sec. 795 (1946); see *Deshotel* v. *Thistlethwaite*, 240 La. 12, 121 So. 2d 222.

Granted .....

Rejected .....

.....

Judge

[fol. 80]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

PROPOSITION OF LAW NO. 12

In Louisiana the district attorney is the elected representative of the public and it is his duty to inquire into the fact of the commission of crimes. Arts. 17.1, 18, La. Code Crim. Proc.

Granted .....

Rejected .....

.....

Judge

[fol. 81]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

PROPOSITION OF LAW NO. 13

Article 1, Section 3, of the Louisiana Constitution and the First Amendment to the United States Constitution require that persons be given the opportunity to inform the community of both sides of an issue of public interest. The purpose of these constitutional guarantees is to protect parties in the free publication of matters of public concern, to secure their right to a free discussion of public events and public measures, and to enable every citizen at any time to bring the government and any person in authority to the bar of public opinion by any just criticism upon their conduct in the exercise of the authority which the people have conferred upon them. Cooley's 2 Constitutional

Limitations (8th ed. 1927) 885; *Wood* v. *Georgia*, 370 U.S. 375.

Granted .....

Rejected .....

.....

Judge

[fol. 82]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

PROPOSITION OF LAW NO. 14

The role that elected officials play in our society makes it imperative that they be allowed freely to express themselves on matters of current public importance. The First Amendment to the United States Constitution affords an absolute privilege to an elected official who expresses himself on such matters. *Wood* v. *Georgia*, 370 U.S. 375.

Granted .....

Rejected .....

.....

Judge

[fol. 83]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

PROPOSITION OF LAW NO. 15

To supply the public need for information and education with respect to the significant issues of the times, a broad conception of the First Amendment to the United States Constitution is necessary. Freedom of discussion must

embrace all issues about which information is needed or appropriate to enable the members of society to cope with the exigencies of their period. *Wood* v. *Georgia*, 370 U.S. 375, quoting from *Thornhill* v. *Alabama*, 310 U.S. 88.

Granted .....

Rejected .....

.....

Judge

[fol. 84]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

PROPOSITION OF LAW NO. 16

Men are entitled to speak as they please on matters vital to them; errors in judgment or unsubstantiated opinions may be exposed, but not through punishment for the expression. Under our system of government, counterargument and education are the weapons available to expose these matters, not abridgment of the right of free speech. *Wood* v. *Georgia*, 370 U.S. 375.

Granted .....

Rejected .....

.....

Judge

[fol. 85]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

PROPOSITION OF LAW NO. 17

Actual malice cannot be inferred from any qualifiedly privileged statement. It must be proven by extrinsic evidence of hatred, ill will or the wanton desire to injure on the part of the accused.

Granted .....

Rejected .....

.....

Judge

[fol. 86]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

MOTION IN ARREST OF JUDGMENT—
Filed February 6, 1963

And now, after judgment against the said Jim Garrison, and before sentence, comes the said Jim Garrison, defendant herein, through undersigned counsel and moves the Court here to arrest judgment herein and not to pronounce the same because of manifest error in the record appearing, to wit:

That the entire proceedings against the defendant are null and void for the reasons that the statutes under which the bill of information is laid is unconstitutional and null and void and in violation of the First Amendment of the United States Constitution as a restriction on the freedom of speech.

Wherefore, the defendant prays that, after due proceedings had, the judgment of the Court herein be set aside and the defendant be discharged, and for all general and equitable relief.

Donald V. Organ, Attorney for Defendant.

Duly sworn to by Donald V. Organ, jurat omitted in printing.

[fol. 87] [File endorsement omitted]

[fol. 88]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

MOTION FOR A NEW TRIAL—Filed February 6, 1963

Now into this Honorable Court comes Jim Garrison, defendant herein, through undersigned counsel, and moves the Court that the judgment of the Court herein be set aside and a new trial ordered for the following reasons, to wit:

I

That the verdict herein is contrary to the law and the evidence.

II

That there is no evidence whatsoever in the record of this case to support the judgment of the Court.

III

That each of the bills of exception reserved during the trial of this case and during preliminary proceedings show error committed to the prejudice of the accused.

IV

The Court erred in denying the defendant's application for a bill of particulars and the defendant was materially hindered in the preparation of his case and that his defense was materially prejudiced thereby.

V

The Court erred in failing to recuse itself from hearing this cause on its merits.

VI

The Court erred in failing to grant the defendant's request for trial by jury.

[fol. 89]

VII

The Court erred in failing to grant the defendant's motion to quash.

VIII

The Court erred to the prejudice of the accused in permitting witnesses to testify as to statements of the defendant other than those set forth in the bill of information herein.

IX

The Court erred to the prejudice of the accused in permitting the accusing judges and others to testify as to hearsay statements of other persons, whose identities were unreveaked and unknown, for the alleged purpose of showing that said judges were subjected to hatred and ridicule as a result of the statements of the defendant; that the said testimony was incompetent for this purpose and that the defendant was prejudiced thereby.

X

The Court erred in not accepting all propositions of law as submitted to the Court by the defense; that each of the said propositions was a correct statement of the law and should have been accepted without qualification.

Wherefore, the defendant prays that after due proceedings had, the judgment of the Court herein be set aside and a new trial granted herein, and for all general and equitable relief.

Donald V. Organ, Attorney for Defendant.

Duly sworn to by Donald V. Organ, jurat omitted in printing.

[fol. 90] [File endorsement omitted]

[fol. 91]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

MOTION FOR APPEAL TO SUPREME COURT OF LOUISIANA AND ORDER THEREON—Filed February 28, 1963

And Now Into Open Court comes the defendant, Jim Garrison, through undersigned counsel, and

On Suggesting To The Court That the record herein shows error to this prejudice, and that he is desirous of appealing to the Honorable, The Supreme Court of the State of Louisiana,

Wherefore, defendant prays that he be granted a suspensive appeal to the Honorable, The Supreme Court of the State of Louisiana returnable in accordance with law.

Donald V. Organ, Attorney for Defendant.

ORDER

Let a suspensive appeal be granted in this case on behalf of the defendant, Jim Garrison, to the Supreme Court of the State of Louisiana, and let the return date be the 28th day of March, 1963, and pending said suspensive appeal, let the defendant be released on bond in the amount of $500.00

on his own recognizance. New Orleans, Louisiana, 28th day of February, 1963, at 2:08 P.M.

Wm. H. Ponder, Judge.

[File endorsement omitted]

[fol. 92]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

Bills of Exception, Nos. 1-4, 6, 8-11, 15-18, 20-26, With Per Curiams—Filed February 28, 1963

BILL OF EXCEPTION NUMBER ONE

Be It Remembered That before the trial of the above numbered and entitled cause, the defendant, by his counsel, on December 17, 1962, did file a Motion to Recuse, which motion reads as follows:

"On Motion Of Jim Garrison, defendant herein, charged with the crime of Defamation, and on respectfully suggesting to this Honorable Court that the Honorable William H. Ponder, Trial Judge ad hoc, should be recused from presiding as such Trial Judge on the trial of your above named defendant for the following reasons, to-wit:

1.

"That the Honorable P. F. Jack Gremillion, Attorney General for the State of Louisiana, who prosecutes this case in the name of the State of Louisiana, has publicly stated in the public press and otherwise, his belief that the integrity of the entire judiciary of the State of Louisiana is an issue in this case and has thus announced his intention of making the integrity of the Louisiana Judiciary an issue in the trial thereof; that the said utterances and the proposed trial have had

and will have the effect of making the entire judiciary of the State of Louisiana an interested party to this case within the meaning of the recusation statutes of the State of Louisiana.

2.

"That the constitutional and statutory provisions of the State of Louisiana authorizing the arbitrary appointment by the Louisiana State Supreme Court of a trier of fact for a particular case, are unconstitutional and null and void as violative of the due process provisions of the Fourteenth Amendment, and that the appointment of the said Honorable William H. Ponder, under color of authority of the said provisions of the Louisiana State Constitution and Revised Statutes, is therefore null and void and of no force and effect.

"Wherefore, your defendant and mover respectfully prays that the Honorable William H. Ponder, Trial Judge ad hoc herein, recuse himself from any further consideration in this matter."

[fol. 93] and,

Whereupon, the Court having denied the Motion to Recuse, your defendant, by his counsel, did then and there in open Court reserve this Bill of Exception making part thereof the Motion to Recuse, the ruling and decision of the Court and the reasons given for same, and the entire record of the case.

and,

There Being error to the prejudice of the defendant, your defendant, Jim Garrison, through his counsel, files this, his formal Bill of Exception, and tenders the same to the Court pursuant to the statute in such case made and provided, which is done accordingly this day of , 1963.

....., Judge.

[File endorsement omitted]

[fol. 94]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

PER CURIAM TO BILL OF EXCEPTION NUMBER ONE

This bill of exception was reserved to denying a motion to recuse filed by the defendant herein.

I will note here that the allegations set forth in paragraph one of the motion and bill of exception are not correct statements of what was said in the statement for the press by the Honorable Jack P. F. Gremillion, Attorney General of the State of Louisiana, as his statement was that the integrity of the judicial system was involved. I find nothing in the statement that "announced his intention of making the integrity of the Louisiana Judiciary an issue in the trial thereof," and no proof was offered that he made this remark.

LSA-R.S. 15:303 sets forth the grounds for recusation of a judge in a criminal case. None of those grounds could possibly be considered other than there might be a vague implication in the allegation that as a result the appointed judge would be an interested party in the case. However, this is simply based on a statement of counsel for the State and could have no binding effect as to the truth thereof on the appointed judge. It is pure sophistry to try to draw this conclusion. However, it is well established in our law, as set forth in State v. Laborde, 38 So. 2d 371, 375, as follows:

> "In State v. Doucet, 199 La. 276, 5 So. 2d 894, 897, we said:
>
> "The jurisprudence of this State is well settled that if the allegations of the petition for the recusation of a judge are mere general statements of conclusions that the judge is prejudiced and biased against or hostile to

[fol. 95] the defendant because of personal or political reasons, or that if the petition does state facts which, if proved, would not constitute a legal ground for recusation, the judge who is sought to be recused may himself overrule the motion and need not refer it to another judge for trial. (Citing a long number of cases.)

Therefore, I considered paragraph one of motion to recuse without merit.

Under paragraph two of the motion and bill of exception, the Constitution of the State of Louisiana gives authority to the Supreme Court of Louisiana for the appointment to act as Judge ad hoc in this case. Further, this court has no supervisory or appellate jurisdiction over an order of the Supreme Court of the State of Louisiana, but the reverse is true, and this appointment may not be collaterally attacked, as the proper procedure and proper forum would be a direct action in the Supreme Court of the State of Louisiana. I do not find that the constitutional and statutory provisions of the State of Louisiana authorizing the appointment by the Louisiana State Supreme Court of a Judge Ad Hoc to try this case would be unconstitutional, null and void and as violative of the due process provisions of the Fourteenth Amendment.

In view of the above, the motion to recuse was overruled. Therefore, I sign this bill as explained and subject to this per curiam attached.

Thus Done And Signed this 28th day of February, 1963.

Wm. H. Ponder, Judge Ad Hoc.

[File endorsement omitted]

[fol. 96]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

BILL OF EXCEPTION NUMBER TWO

Be It Remembered That before the trial of the above numbered and entitled cause, the defendant, by his counsel, on December 17, 1962, did file an Application for Bill of Particulars, which Application for Bill of Particulars read as follows:

"NOW INTO THIS HONORABLE COURT comes Jim Garrison defendant, in the above entitled and numbered cause, and before arraignment pleads that he is unable to answer to the Information, and pleads that he is unable to properly prepare his defense herein until he is furnished with a Bill of Particulars upon the following, to-wit:

1.

"What are the exact words, phrases and/or sentences of the statement set forth in the Bill of Information that are alleged to be defamatory as to the judges named in the said Bill of Information?

2.

"What are the exact words, phrases and/or sentences contained in the said quoted statement that tend to expose to hatred, contempt or ridicule the judges of the Criminal District Court named in the said Bill of Information, or to deprive them of their benefit of public confidence and social intercourse?

3.

"Does the State contend that the statement of the defendant set forth in the Bill of Information contains any allegations of fact which are not true?

4.

"If the answer to Paragraph 3 above is in the affirmative, please set forth the exact words, phrases, and/or sentences containing allegations of fact which are alleged by the State to be untrue.

"WHEREFORE, your defendant prays that the State of Louisiana through the Honorable P. F. Jack Gremillion, the Attorney General, be ordered by the Court to furnish the said Bill of Particulars above requested, and that services of same be made upon your defendant.

[fol. 97] "And your defendant prays for all such other relief to which he is or may be entitled."

and

Whereupon the Court having denied the Application for Bill of Particulars in its entirety, your defendant, by his counsel, did then and there in open court reserve this Bill of Exception, making part thereof the Application for Bill of Particulars, the answer of the State thereto, the ruling of the Court and the entire record in the case.

and

There Being error in the prejudice of the defendant, your defendant, Jim Garrison, through his counsel aforesaid, files this, his formal Bill of Exception, and tenders the same to the Court pursuant to the statute in such case made and provided, which is done accordingly this day of , 1963.

..... Judge.

[fol. 98]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

PER CURIAM TO BILL OF EXCEPTION NUMBER TWO

The motion for a Bill of Particulars herein was overruled, from which ruling the defendant reserved this bill of exception. This bill is predicated upon a request for information as requested in the motion which would require the State to break down the statement as a whole and take certain portions thereof out of context.

It is not necessary in a Bill of Information or Bill of Indictment to set forth solely evidentiary or probative facts that involve a trial on the merits. The question of sufficiency of an indictment or Bill of Information is fully discussed in the case of State v. Smith, 146 So. 2d 152. See also LSA-R.S. 15:288, under which I exercised my discretion, and cases thereunder.

Further, it was urged by the defendant in his *motion to quash*, a statement of law with which I agree, that:

> "It is well settled that in prosecutions for criminal defamation, the words contained in the statement which is the basis of the prosecution must be given their ordinary meaning, determined from an examination of the statement as a whole, in the light of the surrounding circumstances." See Wharton's Criminal Law and Procedure, V. II, p. 750, Section 884 (1957).

Also, in the case of State v. Lambert, 188 La. 968, 178 So. 508 (prosecution for libel) it was held that in analyzing a document and determining its legal effect, the same must be considered as a whole. However, in this case the State has filed an answer to the Bill of Particulars stating that it re-
[fol. 99] lies upon the entire article as quoted in the Bill of Information, and that the statement set forth in the Bill of Information constitutes malice in law and malice in fact.

the State answered that the entire expression and publication as quoted in the Bill of Information would be used as a basis on the trial as the alleged violation of the statute.

Therefore, the motion for Bill of Particulars was overruled in view of the above authorities and the answer to the Bill of Particulars filed by the State, which I deemed sufficient. I therefore sign this bill as explained and subject to this per curiam attached.

Thus Done and Signed this 28th day of February, 1963.

Wm. H. Ponder, Judge ad hoc.

[File endorsement omitted]

[fol. 100]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

BILL OF EXCEPTION NUMBER THREE

Be It Remembered That before the trial of the above numbered and entitled cause, the defendant, by his counsel, on December 17, 1962, did file a Demurrer and Motion to Quash, which Demurrer and Motion to Quash reads as follows:

"NOW INTO THIS HONORABLE COURT comes Jim Garrison, defendant in the above entitled and numbered cause, and before arraignment, and protesting that he is not guilty of the offense set out in the Bill of Information herein, says that the said Information and the matters therein are, as therein alleged and set forth, not sufficient in law to compel him, the said Jim Garrison, to answer thereto, for the following reasons, to-wit:

1.

"That the statement set forth in the Bill of Information attributed to the defendant herein, Jim Garrison, con-

tains no allegations of fact which are defamatory, or which could, through any reasonable interpretation, tend to expose to hatred, contempt or ridicule or to deprive of their benefit of public confidence and social intercourse any of the judges of the Criminal District Court therein named as the persons defamed.

2.

"That the statement set forth in the Bill of Information affirmatively reveals itself to be a comment on the conduct of persons in respect to public affairs and as such protected by a qualified privilege; that despite the allegation of malice contained in the said Bill of Information herein, the statement attributed to the defendant affirmatively shows the absence of malicious motive; that the said statement shows the utterances contained therein to be in response to a previous public criticism by one Judge William O'Hara, and in defense of the defendant's performance of his duties as District Attorney in combating organized vice operations in the City of New Orleans.

3.

"That to told the statement set forth in the Bill of Information to be a violation of Revised Statute 14:47 or to interpret the said R.S. 14:47 defining the crime of defamation so as to include within the scope thereof [fol. 101] the statement set forth in the Bill of Information in this case would violate the provisions of the First Amendment of the Constitution of the United States prohibiting abridgment of speech as the said amendment is made applicable to the State of Louisiana through the Fourteenth Amendment of the United States Constitution.

"WHEREFORE, the defendant prays judgment and that by the Court here he may be dismissed and discharged of the said Information."

and,

Whereupon, the Court having overruled the Demurrer and Motion to Quash in its entirety, your defendant, by his

counsel, did then and there in open Court reserve this Bill of Exception, making part thereof the Demurrer and Motion to Quash, the answer of the State thereto, the ruling of the Court and the entire record in the case.

and

There Being error to the prejudice of the defendant, your defendant, Jim Garrison, through his counsel aforesaid, files this, his formal Bill of Exception, and tenders the same to the Court pursuant to the statute in such case made and provided, which is done accordingly this . . day of , 1963.

..... Judge.

[File endorsement omitted]

[fol. 102]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

PER CURIAM TO BILL OF EXCEPTION NUMBER THREE

This bill of exception was reserved to the overruling of demurrer and motion to quash. The demurrer and motion to quash consisted of three parts; the first of which is that the statement set forth in the Bill of Information was not defamatory such as would bring it within the statutory provisions of LSA-R.S. 14:47. I did not feel that this was properly presented on a motion to quash, as qualified privilege and malice were involved, which would require evidence, particularly also on the truth or falsity thereof, and it should be determined on the trial of the case; and upon trial I held that it was defamatory. It is only when the facts are not disputed that it becomes a question of law alone. State v. Lambert, 178 So. 508.

The second contention of the defendant in this motion was that he was entitled to a qualified privilege in that the

statement was a comment on the conduct of persons in respect to public affairs. However, I considered it also contained statements of fact, rather than criticism or comments on admitted facts. The defendant relies upon the case of State v. O'Donnell, 141 La. 887, in his memorandum brief. However, in that case the court, in quoting from Odgers on Libel (5th Ed.) p. 197, stated in part:

> "Comment on well-known or admitted facts is a very different thing from the assertion of unsubstantiated facts for comment. There is no doubt that the public acts of a public man are lawfully made the subject of fair comment or criticism, not only by the press, but by all members of the public. But the distinction cannot be [fol. 103] too clearly borne in mind between comment or criticism and allegations of fact, such as that disgraceful acts have been committed, or discreditable language used. It is one thing to comment upon or criticize, even with severity, the acknowledged or proved acts of a public man, and quite another to assert that he has been guilty of particular acts of misconduct."

Also, the defendant would necessarily have to have a reasonable belief as to the truth of his comment as set forth in LSA-R.S. 14:49. Also, it is well established that proof of actual malice may destroy a qualified privilege. Therefore, this could only be determined after trial, and was not such as would authorize the sustaining of a motion to quash.

The third contention in this motion is that LSA-R.S. 14:47 defining the crime of defamation violates the provisions of the First Amendment of the Constitution of the United States prohibiting abridgment of the freedom of speech as the said amendment is made applicable to the State of Louisiana through the Fourteenth Amendment of the United States Constitution. This was a proposition of law with which I did not agree.

Therefore, the motion to quash was overruled and the bill of exception was reserved to the ruling of the court, and I

sign this bill of exception subject to per curiam explaining it attached.

Thus Done and Signed this 28th day of February, 1963.

Wm. H. Ponder, Judge ad hoc.

[File endorsement omitted]

[fol. 104]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

BILL OF EXCEPTION NUMBER FOUR

Be It Remembered That before the trial of the above numbered and entitled cause, the defendant, by his counsel, on December 17, 1962, did file a Motion for Trial by Jury, which Motion for Trial by Jury reads as follows:

"Now Into Court through the undersigned counsel comes Jim Garrison, made defendant herein and without waiving or relinquishing any rights or relief sought under pleadings previously filed herein but on the contrary re-urging and reiterating all of the contentions contained in the said prior pleadings moves that the merits of this case be tried by jury and that this case, subject to a determination of the pleadings previously filed herein, be assigned for trial during the jury term in accordance with the rules of this Court for the following reasons, to-wit:

I

"That the provisions of Article 7, Section 41 of the Louisiana State Constitution authorizing trial by the judge alone in cases of misdemeanor is unconstitutional, null and void in that the said State Constitutional provision is in violation of the Sixth and Fourteenth Amendments of the United States Constitution, depriving petitioner of his right to trial by jury and depriving him of due process of law.

II

"That in the alternative defendant alleges that any issue involving the determination of Constitutional rights in general and the right of freedom of speech in particular must be tried by jury under the requirements of the above mentioned United States Constitutional provisions; that the trial of this case will necessarily involve a determination as to certain fundamental Constitutional rights of the defendant and that the trial of this case without jury would serve to deny to defendant due process of law under the Sixth and Fourteenth Amendments of the United States Constitution.

"Wherefore, the defendant prays that the Attorney General of the State of Louisiana be ordered to show cause on a date and at a time to be fixed by this Honorable [fol. 105] Court why the merits of this case, subject to a determination of previous pleadings herein, should not be assigned for trial during the jury term of this Court and set down for trial by jury."

and,

Whereupon, the Court having denied the Motion for Trial by Jury in its entirety, your defendant, by his counsel, did then and there in open Court reserve this Bill of Exception making part thereof the Motion for Trial by Jury, the answer of the State thereto, the ruling of the Court and the entire record in the case.

and

There Being error to the prejudice of the defendant, your defendant, Jim Garrison, through his counsel aforesaid, files this, his formal Bill of Exception, and tenders the same to the Court pursuant to the statute in such case made and provided, which is done accordingly this day of 1963.

.....

Judge

[File endorsement omitted]

[fol. 106]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

PER CURIAM TO BILL OF EXCEPTION NUMBER FOUR

This bill of exception was reserved to overruling a motion for a jury trial in this case. Counsel for defendant cites a number of cases of other jurisdictions, but most all, if not all of them, have to do with contempt proceedings rather than actions in defamation.

The trial of this case is governed by the provisions of Article 7, Section 41, of the Constitution of the State of Louisiana of 1921, which provides:

> " * * * All cases in which the punishment may not be at hard labor shall, until otherwise provided by law, be tried by the judge without a jury. Cases, in which the punishment may be at hard labor, shall be tried by a jury of five, all of whom must concur to render a verdict; cases, in which the punishment is necessarily at hard labor, by a jury of twelve, nine of whom must concur to render a verdict; cases in which the punishment may be capital, by a jury of twelve, all of whom must concur to render a verdict.

I do not consider this article violative of the Sixth and Fourteenth Amendments of the United States Constitution; nor would it deny defendant due process of law under said amendments.

Also, in the case of State v. Livaudais, 161 La. 886, it was held that since the punishment provided was imprisonment without hard labor, the case must be tried by the judge, without a jury.

I find no cases in Louisiana holding that the defendant has a right to demand a trial by jury in a case involving a misdemeanor.

[fol. 107] Therefore, this motion for a jury trial was overruled by me, and to which ruling the defendant reserved a bill of exception. I hereby sign this bill as explained and subject to this per curiam attached.

Thus Done and Signed this 28th day of February, 1963.

Wm. H. Ponder, Judge ad hoc.

[File endorsement omitted]

[fol. 108]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

BILL OF EXCEPTION NUMBER SIX

Be It Remembered That upon the trial of this cause the State, in putting on its evidence, called as a witness one Arthur Roane, who after being duly sworn, was asked by the prosecutor if he had made a report of the defendant's statement to his, the witness's, newspaper.

And, Whereupon, the counsel for the defense objected to the question on the grounds that the newspaper referred to was The Times Picayune and that the Bill of Information charged the defendant with defamation resulting from the publication of defendant's statement in the New Orleans States-Item, but the Court overruled the defendant's objection and permitted the witness to testify that portions of the statement were reported to his paper, to-wit: The Times Picayune, to which ruling and decision of the Court in permitting this testimony, the defendant, by his counsel, then and there excepted, making part thereof the question of counsel for the State, the objection of counsel for the defense, the ruling of the Court and the entire testimony in the case; that the said question, objection and ruling are set forth on pages 34 through 36, inclusive, of the transcript, which said pages are attached hereto and made part hereof by reference as though fully copies herein in extenso.

[fol. 109] And, There Being error to the prejudice of the defendant, your defendant, Jim Garrison, through his counsel aforesaid, files this, his formal Bill of Exception, and tenders the same to the Court pursuant to the statute in such case made and provided, which is done accordingly on this day of 1963.

.....

Judge

[File endorsement omitted]

[fol. 110]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

PER CURIAM TO BILL OF EXCEPTION NUMBER SIX

This bill of exception was reserved to the ruling of the court with reference to a publication of the defamatory statement in that portions of the defamatory statement were published in the Times-Picayune. A partial explanation at the time of my ruling on the matter was given, and in addition thereto the Bill of Information charges the defendant with publishing and expressing the defamatory statement "in the public press of the City of New Orleans to persons other than the persons defamed." I was of the opinion that it was admissible to show malice, and restricted to that alone, that the same statement had been given publicity and notoriety in other publications, and to show the intent of actual malice, particularly in view of the fact that a qualified privilege had been pleaded by the defendant, and it was necessary for the State to prove actual malice, whether the statement was false or true, in order to destroy the qualified privilege if any existed. This evidence was not admitted for the purpose of constituting another crime by the publication.

It might be noted here that although counsel for defendant relies only on the ruling on pages 34 through 36,

inclusive, of the transcript of evidence, that the complete ruling goes through page 37.

Counsel relied upon the case of State v. Alexander, 216 La. 932, 45 So. 2d 83, which case I do not believe apposite here. In that case the crime charged did not involve one of [fol. 111] intent. Under the provisions of LSA-R.S. 14:47, the defendant is charged with "defamation in the malicious publication, etc." Also, the defendant by pleading qualified privilege placed upon the State the burden of proof of actual malice.

However, in this case were it conceded that intent is not an ingredient of the crime of defamation, intent is involved in malice and therefore it was admitted for the purpose of showing actual malice, which carries with it intent. Reference here is made to LSA-R.S. 15:446. It is also recognized that evidence that might not be admissible for one purpose may be introduced for another if restricted to that purpose.

Therefore, the objection was overruled and a bill of exception was reserved, and I sign this bill as explained and subject to this per curiam attached.

Thus Done and Signed this 28th day of February, 1963.

Wm. H. Ponder, Judge ad hoc.

[File endorsement omitted]

[fol. 112]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

BILL OF EXCEPTION NUMBER EIGHT

Be It Remembered That upon the trial of this cause, the State called as a witness one Arthur Roane, who was duly sworn and was asked by the prosecuting attorney if he (Garrison) made a statement to the witness on November 9.

And Whereupon, the defendant, by his counsel then and there objected for the reason that the witness was being questioned as to something that took place subsequent to the date of the alleged defamation, and that the events of November 9 were not relevant or material to the cause, but that the Court overruled the defendant's objection and permitted the witness to answer, to which ruling and decision of the Court the defendant, by his counsel, then and there excepted making part of the said Bill of Exception the question of the prosecuting counsel, the objection of the defense, the Court's ruling, the reasons for the objection, the answer of the witness and all of the testimony in the case, that the question, the objection, ruling and answer are set forth in pages 42 and 43 of the transcript of this case, which said pages are attached hereto and made part hereof as though copies herein in extenso.

And, There Being error to the prejudice of the defendant, your defendant, Jim Garrison, through his counsel [fol. 113] aforesaid, files this, his formal Bill of Exception, and tenders the same to the Court pursuant to the statute in such case made and provided, which is done accordingly on this day of , 1963.

....., Judge.

[File endorsement omitted]

[fol. 114]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

PER CURIAM TO BILL OF EXCEPTION NUMBER EIGHT

This bill of exception was reserved to an objection and ruling set forth on pages 42 and 43 of the transcript of evidence in this case. I ruled that for the purpose of showing malice, statements made before and after the defamatory statement were admissible and restricted to the question of malice. The effect of my ruling was that it did not

constitute another crime, but was restricted to the question of malice under this particular Bill of Information.

In Louisiana Digest, Libel and Slander, Section 60, we find the statement:

> "In an action of slander, other words than those charged, spoken at other times but within one year before the suit, may be proved to show malice."
> Kendrick v. Kemp, 6 Mart. (N.S.) 500.

Of course, LSA-R.S. 14:47 et seq. on defamation is a codification of the former crimes of criminal libel and slander I do not find that this case has been overruled and was of the opinion that statements made after a defamation would be likewise admissible to show malice. This statement also would show the state of mind of the defendant and had to do with the actual statement herein under consideration upon which charge was made.

Also, in 17 R.C.L., Libel and Slander, Section 194, Repetition by Defendant, it is stated:

> "In an action for libel or slander is has been held that proof of previous publications is admissible to show malice, although any action for such publications may be barred by the statute of limitations. Many [fol. 115] courts also apparently hold the broad view that in all cases evidence of a repetition by the defendant of his own slander may be shown to prove express malice. (Citing several cases.) 6 6 6 As respects the admission in evidence of a petitition of a slander after the commencement of an action therefor, it has been held that such evidence is admissible in aggravation of damages after proof of the charge as laid in the declaration, or to show malice, but not as an independent ground for damages. (Citing several cases.)"

However, I do not think that the repetition of the slander or defamation, or a portion thereof, could give rise to another charge, but would show the state of mind of the defendant when discussing the defamatory statement. In an attempt to prove malice it is impossible to probe the

heart or mind of the defendant to ascertain whether or not there was malice, hatred, ill will or enmity or a wanton desire to injure, but the best proof of that state of mind is what he says and does with reference thereto, both before and after the defamatory statement is published if it be in connection with the defamation charged.

Therefore, the objection was overruled and a bill of exception was reserved, and I sign this bill as explained and subject to this per curiam attached.

Thus Done and Signed this 28th day of February, 1963.

Wm. H. Ponder, Judge ad hoc.

[File ndorsement omitted]

[fol. 116]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

BILL OF EXCEPTION NUMBER NINE

Be It Remembered That upon the trial of this cause, the State called as a witness one Jack Kneece, who was duly sworn and was asked by the prosecuting attorney if he (Garrison) had said anything about this case during the course of an address to the Press Association on the night of January 12, 1963, whereupon the witness answered that the defendant had stated during the course of the said address that even a bookie wouldn't take odds on the fact that he would be convicted, but that he was of the opinion that his conviction would be reversed by a higher court.

And Whereupon the defendant, through his counsel, then and there moved that the said testimony be stricken for the reason that the sole purpose of the testimony was to prejudice the defendant, but the Court overruled the defendant's objection, to which ruling and decision of the Court the

defendant excepted making part of the Bill of Exception the question of the prosecuting counsel, the answer of the witness, the objection to the said testimony, the Court's ruling and all of the evidence in the case; that the said question, answer, objection and ruling are set forth on pages 92 through 94, inclusive, of the transcript in this case, which said pages are attached hereto and made part hereof as though copies herein in extenso.

[fol. 117] And, There Being error to the prejudice of the defendant, your defendant, Jim Garrison, through his counsel aforesaid, files this, his formal Bill of Exception, and tenders the same to the Court pursuant to the statute in such case made and provided, which is done accordingly on this day of 1963.

....., Judge.

[File endorsement omitted]

[fol. 118]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

PER CURIAM TO BILL OF EXCEPTION NUMBER NINE

This bill of exception was reserved to the court's ruling as appears on pages 92 through 94 of the transcript of evidence. However, I think the whole of the evidence on pages 90 through 94 should constitute the evidence considered. This statement was made by the defendant in discussing the defamatory statement repeating the question of racketeering influences in referring to the judges in a statement that he made. For the reasons that were assigned in per curiam to bill of exception number eight, I was of the opinion that any statement he made about the judges, and which referred to the defamatory statement with which the defendant was charged, would be admissible to show malice. This comment, with other comments at the same time and considered together, was made with reference to this particular case,

and the comments made by the defendant with reference thereto would be admissible and was not considered by me as being prejudicial.

It will be noted that it is questionable whether a bill of exception was reserved to that portion of the statement with reference to the bookie, "that even a bookie wouldn't take odds on the fact that he would be convicted." I overruled the motion to strike and no bill was taken at that time (page 93 of the transcript of evidence). Then counsel for the State asked an additional question as to other statements about the judges on this occasion in which the defendant had expressed the opinion that he would be convicted but it would probably be reversed by a higher court. No ruling was made on this question and answer, but counsel for defendant makes the following statement:

> [fol. 119] "If Your Honor please, I am going to make the same objection. I presume the ruling is going to be the same, and I would like to reserve a bill of exception. I respectfully reserve Bill of Exception No. 9 to the Court's ruling denying our motion to strike this evidence, and I will ask that the Bill of Exception include the question, the answer, our objection to it, the Court's ruling, all of the evidence in the case, and the entire record."

It will be seen, therefore, that the bill was sought to be reserved to a motion to strike the evidence in the last question, answer and objection and the court's ruling; whereas, the court did not rule on the question, but counsel acted on the presumption that the court would rule as it had previously ruled on other questions.

Therefore, I do not think this bill could be said to be well taken even if it were to be otherwise meritorious. However, I do not consider it meritorious because it had no prejudicial effect on me one way or the other as to what his opinion of the outcome of the case would be, but it was simply a statement made by the defendant in connection with other statements made in the same talk, again refer-

ring to the defamatory statement and racketeering influences. Therefore, I sign this bill as explained and subject to this per curiam attached.

Thus Done And Signed this 28th day of February, 1963.

Wm. H. Ponder, Judge ad hoc.

[File endorsement omitted]

[fol. 120]

In Criminal District Court

Parish of Orleans, Louisiana

[Title omitted]

Bill of Exception Number Ten

Be It Remembered that upon the trial of this cause, the State called as a witness Judge Malcolm V. O'Hara, who was duly sworn and was asked by the prosecuting counsel if the witness had suffered as a result of the statement made by the defendant, whereupon the witness testified as to remarks and actions of other persons.

And Whereupon counsel for the defendant moved that the answer of the witness be stricken in that it was based on the impressions and opinions of the witness and that the testimony was purely hearsay, but that the court denied the said motion, overruled the objection of the defense and permitted the testimony to stand, to which ruling and decision of the Court the defendant, by his counsel, then and there excepted and made part of the Bill of Exception the question of counsel, the answer of the witness the motion to strike the answer, the Court's ruling on the motion and objection, the reasons of the defense for the motion and the entire testimony in the case; that the question, answer, motion and reasons and ruling of the Court are set forth on pages 152 through 156, inclusive, which said pages are attached hereto and made hereof as though copies herein in extenso.

And, There Being error to the prejudice of the defendant, your defendant, Jim Garrison, through his counsel aforesaid, files this, his formal Bill of Exception, and tenders [fol. 121] the same to the Court pursuant to the statute in such case made and provided, which is done accordingly on this day of , 1963.

....., Judge.

[File endorsement omitted]

[fol. 122]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

PER CURIAM TO BILL OF EXCEPTION NUMBER TEN

This bill of exception was reserved to a ruling of the court on the question of whether or not the defamatory statement published had subjected this witness, who was one of the persons defamed, to ridicule to any extent. The defendant objected on the ground that it called for an opinion by the witness and also on the ground that it was hearsay. I did not think that the fact that the defamatory statement subjected the defamed person to hatred, contempt or ridicule would be a matter of opinion on his part. He would be the only one who would know and could testify as to the reaction of the public to the defamatory statement, and it is a question of fact as to how it affected his relationship. This is a question of fact within his knowledge and not a question of opinion because it arose by reasons of an observation rather than an opinion. Hatred, contempt or ridicule may be shown by the demeanor of his friends in shunning him, or in coldly greeting him, or other physical evidence of contempt, hatred or ridicule, or a coolness in his social relationship; and these are matters of fact and observation rather than opinion.

Also, with reference to the objection as to hearsay, nowhere will it be found in my ruling that any statements by other parties, out of the presence of the defendant, would be admissible. As a matter of fact, I specifically ruled "the witness could not testify as to conversations outside the [fol. 123] presence of the defendant" and excluded also any details of any reaction of the public, and restricted the evidence to that alone. This came after the motion to strike which rules out statements of others out of the presence of defendant.

In "McCormick on Evidence" (1954) the hearsay rule is defined as follows:

> "Hearsay evidence is testimony in court or written evidence, of a statement made out of court, such statement being offered as an assertion to show the truth of matters asserted therein, and thus resting for its value upon the credibility of the out-of-court asserter. * * *
>
> "In the light of our discussion, then, we can say that the suggested definition, which is supported by many recent judicial expressions, seeks to limit the term 'hearsay' to situations where the out-of-court assertion is offered as equivalent to testimony to the facts so asserted by a witness on the stand. Only then does the want of such safeguards as cross-examination become material."

LSA-R.S. 14:47 in defining the crime of defamation as being a malicious publication or expression in any manner, to anyone other than the party defamed, of anything which tends:

> "(1) To expose any person to hatred, contempt, or ridicule, or to deprive him of the benefit of public confidence or social intercourse; * * *."

Thus it will be seen that if the publication or expression did not expose the party defamed to hatred, contempt or ridicule, etc., then there would be no crime under the statutory provision. It is well established that every essential ingredient of the crime charged must be proven, and the

State was exercising its right to prove the result of the defamatory statement rather than any details or hearsay evidence. My ruling excluded particularly any hearsay evidence or opinion evidence, but allowed the introduction of [fol. 124] a question of fact within the knowledge of the witness as to the result of the defamatory statement in subjecting him to contempt, hatred, ridicule, etc.

I therefore overruled the objection as I was of the opinion that the evidence was clearly admissible to prove an essential ingredient of the crime in the Bill of Information, and I sign this bill as explained and subject to this per curiam attached.

Thus Done and Signed this 28th day of February, 1963.

Wm. H. Ponder, Judge ad hoc.

[File endorsement omitted]

[fol. 125]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

BILL OF EXCEPTION NUMBER ELEVEN

Be It Remembered that upon the trial of this cause, the State called as a witness one Robert Kelso, who was duly sworn and was asked by the prosecuting attorney to testify as to certain remarks made by the defendant on January 11, 1963, and stated in response to questions of the prosecuting attorney that he could not recall everything the defendant had said, but that he had taken notes on things that he, the witness, regarded as specially pertinent.

And Whereupon the defendant, by his counsel, then and there objected to testimony concerning the substance of the statement for the reason that the witness should not so testify unless he could recall substantially all of what the defendant had stated and that the witness should not be

allowed to qupte portions of the defendant's statement out of context, but that the Court overruled the objection and permitted the testimony, to which ruling and decision the defendant, by his counsel, then and there excepted, making part of his Bill of Exception the question of counsel, the objection of the defense, the reason for the objection, the Court's ruling and the entire testimony of the witness, and the entire record in the case; that the pertinent testimony of the witness, including the question, objection, reasons therefor, the Court's ruling and answer thereto are set forth on pages 126 through 131, inclusive, of the transcript, which said pages are attached hereto and made part hereof [fol. 126] as though copied herein in extenso.

And, There Being error to the prejudice of the defendant, your defendant, Jim Garrison, through his counsel aforesaid, files this, his formal Bill of Exception, and tenders the same to the Court pursuant to the statute in such case made and provided, which is done accordingly on this day of , 1963.

....., Judge.

[File endorsement omitted]

[fol. 127]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

PER CURIAM TO BILL OF EXCEPTION NUMBER ELEVEN

This bill of exception was reserved to evidence of statements made by the defendant to Mr. Robert Kelso, reporter, or in his presence. For a proper consideration of this bill of exception the whole of the testimony of this witness must be taken, beginning with line 4, page 125 of the transcript of testimony, rather than taking the portion only as set forth on the pages indicated in the bill of exception. This witness testified that he remembered substantially the whole of statements made by the defendant on the various occa-

sions and correctly reported them, and remembered the substance of what the defendant said, but could not testify *verbatim*. He is not required to report or testify verbatim on these statements, but to remember the substance and testify as to the substance or substantially all that was said. He further testified that he remembered the substance of what was said with reference to the *charge of defamation* by the persons alleged to be defamed, but on other issues which would not be relevant or material he did not report.

It will be noted on page 125 of the transcript of evidence, in referring to the remarks made by the district attorney on January 11, 1963 and reported in the press, that the question was asked (line 17):

"Q. What did Mr. Garrison say at that time?

"Mr. Organ: If Your Honor please, now I am going to object, unless this witness testifies that he can recall all of the substantial portions of Mr. Garrison's remarks relating to this case.

[fol. 128] "Q. Could you so recall, Mr. Kelso, in substance?

"A. Yes, I think so."

It will further be noted that on page 127 of the transcript of evidence, line 6, under questioning by me, the question was asked:

"Q. Did I understand you to say that you remembered the substance of all that was said there?

"A. Yes, in connection with this case, yes."

Therefore, I do not think counsel is correct in his statement that the witness could not recall substantially all that the defendant had stated insofar as it affected this case.

It is my impression that his evidence is complete and not taken out of context insofar as the remarks relating to the present case is concerned. I specifically ruled out any impression or import of the conversation or statement made by the defendant, but allowed to be introduced in evidence the statements made by the defendant for the purpose of

showing malice, which has been more fully discussed by me in my per curiam to bill of exception number eight. Also, I will make a part of this per curiam a ruling made at the time that the bill of exception was reserved. I might also observe here that any statement made by the defendant with reference to this particular difficulty or with reference to the commission of the crime with which he is charged, as to how and why he made the defamatory statement, would be admissible just as any statement of any defendant as to how or why he committed any other crime would be admissible if otherwise qualified under law.

[fol. 129] I therefore overruled the objection of the defendant to the admission of these statements, and sign this bill as explained and subject to this per curiam attached.

Thus Done and Signed this 28th day of February, 1963.

Wm. H. Ponder, Judge ad hoc.

[File endorsement omitted]

[fol. 130]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

BILL OF EXCEPTION NUMBER FIFTEEN

Be It Remembered that upon the trial of this cause the State called as a witness Judge Shirley G. Wimberly who was duly sworn and was asked by the Prosecuting Attorney as to whether the alleged defamatory statement of the defendant had subjected him, the witness, to ridicule, and as to how he had been subjected to ridicule, and stated in response to the said questions that he had received many telephone calls of derision.

And Whereupon the defendant, by his counsel, then and there objected on the grounds that such testimony was hearsay and on the further grounds that the witness should not be allowed to state an impression of a telephone conversation but that the witness should in any event be restricted

to stating the remarks of the other party to the conversation, but that the Court overruled the objection and permitted the testimony, to which ruling and decision the defendant, by his counsel, then and there excepted, making part of his Bill of Exception the questions of counsel, the objection of the defendant and the reasons stated therefor, the ruling of the Court, the entire testimony of the witness and all of the testimony in the case; and the pertinent testimony of the witness, including the questions, objections, reasons therefor, the Court's ruling and reasons therefor, are set forth on pages 253 through 255 inclusive of the transcript, which said pages are attached hereto and made part hereof as are copies herein in extenso.

[fol. 131] And, There Being error to the prejudice of the defendant, your defendant, Jim Garrison, through his counsel aforesaid, files this, his formal Bill of Exception, and tenders the same to the Court pursuant to the statute in such case made and provided, which is done accordingly on this day of , 1963.

....., Judge.

[File endorsement omitted]

[fol. 132]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

PER CURIAM TO BILL OF EXCEPTION NUMBER FIFTEEN

This bill of exception arose by reason of any answer of the witness, Judge Shirley G. Wimberly, as to whether the defamatory statement of the defendant had subjected him to ridicule. This was objected to on the ground that it was hearsay and the evidence should not be allowed to state an impression of a telephone call. I make a part of this per curiam my per curiam which is attached to bill of exception number ten and my rulings on this question contained on pages 253 and 254 of the transcript of evidence. It will be

noted that it was not hearsay for the reason that nowhere in the ruling was the witness allowed to say what was said to him over the telephone, but only that there had been a public reaction by reasons of the defamatory statement. I specifically ruled that anything said to the witness over the telephone would be hearsay evidence. However, it is a question of fact within the knowledge of the witness that he did have telephone calls which did present a public reaction of hatred, contempt or ridicule, which was essential that the State be allowed to prove, and that is a question *of fact*, something that happened to him, within the knowledge of the witness and not a question of hearsay or impression.

I do not find in the testimony on pages 253 through 255 of the transcript any objection or ruling that the witness should in any event be restricted to stating the remarks of the other party to the conversation.

[fol. 133] I further assign as reasons herein by reference, insofar as they may be applicable, my explanation in per curiam to bill of exception number ten.

Therefore, I overruled the objection made, and sign this bill as explained and subject to this per curiam attached.

Thus Done and Signed this 28th day of February, 1963.

Wm. H. Ponder, Judge ad hoc.

[File endorsement omitted]

[fol. 134]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

BILL OF EXCEPTION NUMBER SIXTEEN

Be It Remembered that upon the trial of this cause the State called as a witness Judge Oliver P. Schulingkamp who was duly sworn and was asked by the Prosecuting Attorney as to whether, since the publication of the alleged defama-

tory statement by the defendant, he, the witness, had been subject to ridicule, embarrassment and so forth as a result thereof.

And Whereupon the defendant, by his counsel, then and there objected to the question on the ground that the question called for a speculation on the part of the witness and called for his impressions which would be in turned based upon hearsay testimony, but that the Court overruled the objection and permitted the witness to testify, to which ruling and decision the defendant, by his counsel, then and there excepted, making part of his Bill of Exception the question of counsel, the objection of the defendant and reasons therefor, the Court's ruling and its reasons therefor, the answer of the witness to the said question, the entire testimony of the witness and the entire record in the case; that the pertinent testimony of the witness, including the question, objection, reasons therefor and the Court's ruling and the answer to the question as set forth on pages 307 through 310, inclusive, of the transcript, which said pages are attached hereto and made part hereof as are copied herein in extenso.

[fol. 135] And There Being error to the prejudice of the defendant, your defendant, Jim Garrison, through his counsel, aforesaid, files this, his formal Bill of Exception, and tenders the same to the Court pursuant to the statute in such case made and provided which is done accordingly on this day of , 1963.

....., Judge.

[File endorsement omitted]

[fol. 136]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

PER CURIAM TO BILL OF EXCEPTION NUMBER SIXTEEN

This bill of exception was reserved to the overruling of an objection by counsel for defendant on a question propounded to Judge Oliver P. Schulingkamp as to whether or not the alleged defamatory statement by the defendant had subjected him to ridicule, embarrassment, etc. as a result thereof.

I have previously discussed this same question in my per curiam to bills of exception number ten and fifteen. I make a part of this per curiam my ruling at the time of the objection, appearing on pages 307-308 of the transcript of evidence. Nowhere does it appear that I have allowed the introduction of any hearsay evidence or any impression to be given. I have specifically ruled out any hearsay evidence in connection with this. Also, it might be stated that as to whether or not the witness had been subjected to ridicule, embarrassment, etc. as a result of the defamatory statement, that is a matter within his knowledge as an observation, and not an impression. It constitutes a question of fact; and hatred, contempt or ridicule can be evidenced in many ways other than by statements made by any third person, and this witness would be the only one by whom this fact could be proven.

I therefore sign this bill of exception subject to per curiam attached explaining it.

Thus Done and Signed this 28th day of February, 1963.

Wm. H. Ponder, Judge ad hoc.

[File endorsement omitted]

[fol. 137]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

BILL OF EXCEPTION NUMBER SEVENTEEN

Be It Remembered that upon the trial of this cause the State called as a witness Judge Thomas M. Brahney, Jr., who was duly sworn and was asked by the Prosecuting Attorney as to whether he had been personally exposed to hatred, contempt and ridicule as a result of the alleged defamatory statement by the defendant.

And Thereupon the defendant, by his counsel, then and there objected to the question for the reason that the witness could not know except through conjecture whether any occurence subsequent to the alleged statement of the defendant was caused by the statement of the defendant and for the further reason that such evidence was irrelevant and immaterial to the case, but that the Court overruled the objection and permitted the witness to answer the same, to which ruling and decision the defendant, by his counsel, then and there excepted making part of his Bill of Exception the question of counsel, the objection thereto, the Court's ruling and its reasons, the answer of the witness, the entire testimony of the witness and the entire testimony in the case; that the pertinent testimony of the witness, including the questions, objections, reasons therefor, the Court's ruling and its reasons and the answer to the said question as set forth in pages 515 through 518, inclusive, of the transcript which said pages are attached hereto and made part hereof as are copied herein in extenso.

[fol. 138] And There Being error to the prejudice of the defendant, your defendant, Jim Garrison, through his counsel aforesaid, files this, his formal Bill of Exception, and tenders the same to the Court pursuant to the statute in such case made and provided which is done accordingly on this day of , 1963.

....., Judge.

[File endorsement omitted]

[fol. 139]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

PER CURIAM TO BILL OF EXCEPTION NUMBER SEVENTEEN

This bill of exception arose by reason of a ruling on the question addressed to the witness, Judge Thomas M. Brahney, Jr., as to whether or not he had been personally exposed to hatred, contempt or ridicule as a result of the alleged defamatory statement by the defendant.

I make a part of this per curiam my ruling appearing on pages 516-517 of the transcript of evidence. Also, I make as a part of this per curiam the same reasons for overruling practically the same objection, as set forth in per curiam to bills of exception ten, fifteen and sixteen.

I therefore sign this bill as explained and subject to this per curiam attached.

Thus Done and Signed this 28th day of February, 1963.

Wm. H. Ponder, Judge ad hoc.

[File endorsement omitted]

[fol. 140]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

BILL OF EXCEPTION NUMBER EIGHTEEN

Be It Remembered that upon the trial of this cause the State called as a witness Chief Joseph I. Giarrusso, Superintendent of the New Orleans Police Department, who was duly sworn and was asked by the Prosecuting Attorney to testify as to whether Mr. Garrison, the defendant, had called upon him for more assistance by police officers.

And Whereupon the defendant, by his counsel, then and there objected to the question for the reason that it was misleading, but that the Court overruled the objection and permitted the testimony, to which ruling and decision the defendant, by his counsel, then and there excepted, making part of his Bill of Exception the question of counsel, the objection and reason therefor, the Court's ruling, the answer of the witness, the entire testimony of the witness and all of the testimony in the case including previous objections to the same line of testimony and the statements of the Court in response to the said previous objections; that the pertinent testimony of the witness including the question, objection, the reason therefor, the ruling of the Court, the answer of the witness, prior objections of the defense and statements of the Court and response thereto are set forth in pages 597 through 603, inclusive, of the transcript, which said pages are attached hereto and made part hereof as are copied herein in extenso.

[fol. 141] And There Being error to the prejudice of the defendant, your defendant, Jim Garrison, through his counsel aforesaid, files this, his formal Bill of Exception, and tenders the same to the Court pursuant to the statute in such case made and provided which is done accordingly on this day of , 1963.

....., Judge.

[File endorsement omitted]

[fol. 142]

IN CRIMINAL DISTRICT COURT

ORLEANS PARISH, LOUISIANA

[Title omitted]

PER CURIAM TO BILL OF EXCEPTION NUMBER EIGHTEEN

This bill of exception was reserved to a ruling on a question addressed to Chief Joseph I. Giarrusso, Superintendant of the New Orleans Police Department, by counsel for the State, as to whether or not the defendant had called upon him for more assistance by police officers.

Counsel in his bill of exception seeks to make a part thereof prior objection of the defense and statements of the court in response thereto, as set forth in pages 597 through 603 of the transcript of evidence, inclusive. However, it will be noted that pages 597, 598 and 599 were questions and discussions of law in which counsel for defendant states at the bottom of page 599:

> "Mr. Organ: Well, that is what he is going to testify, if that was the purpose of the question, we have no objection to it."

To which counsel for the State replied: "That is the sole purpose." Therefore, the evidence appearing on those pages should not be considered, as counsel had stated that he had no objection, which waived any previous objection, etc.

However, beginning on page 600 of the transcript of evidence, the question was asked by counsel for the State as to whether or not defendant had called upon him (Chief Giarrusso) for any more help since certain police officers had been assigned to the office of the defendant. This was objected to by counsel for defendant as misleading, but I did not believe that it could possibly be misleading. The [fol. 143] evidence by this witness, without objection, was that the defendant and his assistants had selected twelve police officers to be assigned by the Police Department to the defendant's department, eleven of whom were how serving. Certainly it was proper to allow the State to ask whether any more police officers had been requested or assigned to that department. This was neither misleading or prejudicial.

At the top of page 601 of the transcript of evidence, I did not allow the prior questions and statements to go into the bill for the reason that counsel had waived this by stating that he had no objection to it after the court explained its ruling, but I restricted the bill of the last question and answer, and no objection was made to this by counsel for defendant or bill reserved. Neither did I allow the State to go into the question as to what might have

been the result if the defendant had called for more assistance. (Tr. p. 603.)

I therefore sign this bill as explained and subject to this per curiam attached.

Thus Done and Signed this 28th day of February, 1963.

Wm. H. Ponder, Judge ad hoc.

[File endorsement omitted]

[fol. 144]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

BILL OF EXCEPTION NUMBER TWENTY

Be It Remembered that upon the trial of this cause, before the argument had begun, defense counsel presented to the Court for its consideration as a charge would be presented were the case tried by a jury, a proposition of law and requested the ruling of the Court on this proposition which was numbered Eleven and reads as follows:

> "Publications made in the discharge of a public duty under authority of law are privileged. Burdick, Law of Crime, v. 3, p. 166, sec 795; see *Deshotel* v. *Thistlethwaite*, t40 La. 12, 121 So. 2nd 222."

The Court rejected Proposition of Law No. Eleven for the reason that it allegedly has no application to the facts of this case and is not a full and correct statement; further, that it would require an extended qualification, explanation and limitation if it were applicable; further, that the statement is incomplete and therefore the Court is not required to charge it; and further, that it is not a complete and correct statement of the Court's ruling in the case of *Deshotel* v. *Thistlethwaite*.

To which ruling, the defendant, through his counsel, reserved a bill of exception and stated as his reason therefor that the evidence in this case shows that defendant's actions arose directly out of his duties as District Attorney for the Parish of Orleans, that he was in the discharge of a public duty when this controversy arose, and further that he has the duty, as a matter of law, to inform the public of the conduct of his office; and if he is thwarted in the operation and conduct of his office he has the duty to inform the public why he is so thwarted; and furthermore, the proposition is a complete statement of the law insofar [fol. 145] as the publications of a person who has a public duty to make the publication is concerned, and so would be applicable to this case. Defense counsel included in this bill of exception all of the testimony in the case, the entire record, his request for Proposition of Law No. 11, his Honor's rejection of it, the reason for the rejection, and the statement of defense counsel in support of the said proposition of law.

And There Being error to the prejudice of the defendant, your defendant, Jim Garrison, through his counsel aforesaid, files this, his formal Bill of Exception, and tenders the same to the Court pursuant to the statute in such case made and provided, which is done accordingly on this day of 1963.

....., Judge.

[File endorsement omitted]

[fol. 146]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

PER CURIAM — BILL OF EXCEPTION NUMBER TWENTY

This bill of exception was reserved to a rejection by me of a proposition of law as set forth in this bill. This propo-

sition of law was rejected for the reason that it had no application to the facts in this case and is not a full and correct statement of the law. It was further rejected for the reason that it would require an extended qualification, explanation and limitation if it were applicable. Further, the statement was incomplete, and under these circumstances the court was not required to charge this. LSA-R.S. 15:390, and cases thereunder.

Further, it was rejected as not a complete and correct statement of the complete ruling in the case of Deshotel v. Thistlethwaite, cited.

I did not think that the Deshotel v. Thistlethwaite case supported a publication such as in this case without limitation of the abuse of the privilege and that the defendant would not be amenable for false defamatory statements for the abuse thereof, which would be violative of Article One, Section Three, of the Constitution and Statutes of the State of Louisiana.

I did not find any fault with the statement that a public officer has a right to inform the public of the conduct of his office, and if it were privileged it would only be a conditional or qualified privilege; which, of course, could be destroyed by proof of actual malice.

This was a Proposition of law taken out of context of the [fol. 147] author and was subject to qualification, explanation and limitation in a consideration of the whole of the article. In the discharge of a public duty under authority of law, or a public officer in informing the public of the conduct of his office, it should be that the publication would be true in the discharge of a public duty, asserting legitimate reasons, rather than a false defamatory statement imputing wrongdoing to another public officer without any facts to justify it. I did not find that the statement made by the defendant was a publication made in the discharge of a public duty altogether, but was a defamatory statement of fact maliciously made, and not a comment alone upon admitted facts; but he went beyond that and made statements of fact which were false.

Further, I did not find that this charge was *wholly correct* and *wholly pertinent* to the facts in this case. Also, I found that it would require an even more extended qualification, explanation and limitation if it were applicable.

I therefore sign this bill as explained and subject to this per curiam attached.

Thus Done and Signed this 28th day of February, 1963.

Wm. H. Ponder, Judge Ad Hoc.

[File endorsement omitted]

[fol. 148]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

BILL OF EXCEPTION NUMBER TWENTY-ONE

Be It Remembered that upon the trial of this cause, before the argument had begun, defense counsel presented to the Court for its consideration a proposition of law, as a charge would be presented were the case tried by a jury, and requested the ruling of the Court on this proposition which was numbered thirteen and reads as follows:

> "Article 1, Section 3, of the Louisiana Constitution and the First Amendment to the United States Constitution require that persons be given the opportunity to inform the community of both sides of an issue of public interest. The purpose of these constitutional guarantees is to protect parties in the free publication of matters of public concern, to secure their right to a free discussion of public events and public measures, and to enable every citizen at any time to bring the government and any person in authority to the bar of public opinion by any just criticism upon their conduct in the exercise of the authority which the people have conferred upon them. Cooley's 2 Constitutional Limitations (8th ed. 1927) 885; *Wood* v. *Georgia*, 370 U.S. 375."

The Court qualified Proposition of Law No. thirteen by pointing out that Article 1, Section 3, of the Louisiana Constitution provides that a person shall be responsible for the abuse of liberty of speech; and that the statement is evidently one taken out of context from the decision of *Wood* v. *Georgia*, which was a contempt proceeding and not an action in defamation.

To which ruling, the defendant, through his counsel, reserved a bill of exception, excepted and stated as his reason therefor that *Wood* v. *Georgia* dealt with freedom of speech, and it makes no difference whether freedom of speech is challenged through the media of contempt proceedings or criminal defamation proceedings; if freedom of speech pro-
[fol. 149] tects an individual, it protects him against all challenges.

Defense counsel included in this bill all of the testimony in the case, the entire record, his request for Proposition of Law No. 13, His Honor's ruling, and his reasons therefor.

And, There Being error to the prejudice of the defendant, your defendant, Jim Garrison, through his counsel aforesaid, files this, his formal Bill of Exception, and tenders the same to the Court pursuant to the statute in such case made and provided, which is done accordingly on this day of , 1963.

....., Judge.

[File endorsement omitted]

[fol. 150]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

PER CURIAM TO BILL OF EXCEPTION NUMBER TWENTY-ONE

This bill of exception was reserved to a proposition of law number thirteen submitted to the court as set forth in the attached bill of exception. This was not rejected but was granted, qualified however in that Article One, Section Three, of the Constitution of the State of Louisiana was not a part of the holding in the case of Wood v. Georgia and its authority.

Article One, Section Three of the Constitution of Louisiana, provides:

> "No law shall ever be passed to curtail or restrain the liberty of speech or of the press; any person may speak, write and publish his sentiments on all subjects, *being responsible for the abuse of that liberty.*

I did not think that the case of Wood v. Georgia is wholly pertinent to this action of defamation for the reason that that was a contempt proceeding and the holding of the right of freedom of speech there was turned upon the question of whether or not there was a clear and apparent danger to the administration of justice that would vitiate the freedom to express opinions as were therein expressed. Also, the statement was taken out of context and added to, and should be taken in connection with a reading of the decision as a whole.

This is an action for defamation under the provisions of LSA-R.S. 14:47 and qualified privilege pleaded under LSA-R.S. 14:49, which provides that if the statement is qualifiedly privileged, it must be based upon a reasonable belief [fol. 151] in the truth of the comment. Therefore, I considered it was not wholly pertinent under the authorities cited or applicable to the facts in this case, being an action

in contempt rather than defamation, and also that under Article One, Section Three, of the Constitution of the State of Louisiana one might be held responsible for an abuse of the liberty of the freedom of speech.

I granted this proposition of law for the reason that I agree in principle with it, but in addition to the other reasons assigned as to why it might not be applicable to the facts in this case, it might be noted that this principle of law only permits a *just criticism,* rather than defamatory statement of facts.

I therefore sign this bill as explained and subject to this per curiam attached.

Thus Done and Signed this 28th day of February, 1963.

Wm. H. Ponder, Judge Ad Hoc.

[File endorsement omitted]

[fol. 152]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

BILL OF EXCEPTION NUMBER TWENTY-TWO

Be It Remembered that upon the trial of this cause, before the argument had begun, defense counsel presented to the Court for its consideration a proposition of law, as a charge would be presented were the case tried by a jury, and requested the ruling of the Court on this proposition which was numbered Fourteen and reads as follows:

> "The role that elected officials play in our society makes it imperative that they be allowed freely to express themselves on matters of current public importance. The First Amendment to the United States Constitution affords an absolute privilege to an elected official who expresses himself on such matters. *Wood* v. *Georgia*, 370 U.S. 375."

The Court rejected Proposition of Law No. 14 as an incomplete statement of the law on the subject; as inconsistent with Article 1, Section 3 of the Louisiana Constitution, which places certain restrictions on the exercise of free speech; and as inapplicable to the facts of the case and to the defense of the accused, which is a qualified and not an absolute privilege.

To which ruling, the defendant, through his counsel, excepted to the Court's ruling and stated as his reason therefor that the case of *Wood* v. *Georgia* holds that freedom of speech is guaranteed by the United States Constitution, which cannot be qualified by any law of the State of Louisiana, constitutional or otherwise; and further on the basis that the entire record in this case discloses that Mr. Garrison was an elected official and therefore this proposition applies directly to his activity, with a duty to the people of the Parish of Orleans. Defense counsel included in this [fol. 153] bill of exception all of the testimony in the case, the entire record, his request for Proposition of Law No. 14, his Honor's ruling, and the statement of defense counsel in support of the said proposition of law.

And, There Being error to the prejudice of the defendant, your defendant, Jim Garrison, through his counsel aforesaid, files this, his formal Bill of Exception, and tenders the same to the Court pursuant to the statute in such case made and provided, which is done accordingly on this day of , 1963.

....., Judge.

[File endorsement omitted]

[fol. 154]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

PER CURIAM TO BILL OF EXCEPTION NUMBER TWENTY-TWO

This bill of exception was reserved to a proposition of law number fourteen submitted to the court which was rejected for the reason that it was incomplete and not a correct statement of the law as to Article One, Section Three of the Constitution of the State of Louisiana. However, I did not hold it inconsistent therewith as stated by counsel in his bill of exception. I did not say in rejecting it that the Louisiana Constitution, or any law of the State of Louisiana, could qualify or be superior to the United States Constitution. However, I did not find that the Constitution of the United States or the Constitution of the State of Louisiana grants an *absolute* privilege to make *any* statement, particularly a false defamatory or derogatory statement, simply because a person is an elected official, in commenting on matters of public importance, and in so doing, make unsubstantiated and false statements of fact regarding other persons, rather than commenting upon admitted facts, and the party defamed would have no legal remedy.

I did not find also that the case of Wood v. Georgia, cited as authority, supports an absolute privilege to an elected official to *so* speak and conduct himself *in all* cases. I did not find any fault with the first sentence of the proposition if the freedom of expression is not abused.

[fol. 155] Defendant in this case has only pleaded a qualified privilege. However, he would be entitled in a criminal case to any privilege afforded by the law. This proposition of law was rejected also for the reason that there could be no absolute privilege as defined in LSA-R.S. 15:50. It was also rejected for the reason that it was not applicable to the facts in this case and was not *wholly correct* and wholly pertinent.

I therefore sign this bill of exception as explained and subject to this per curiam.

Thus Done and Signed this 28th day of February, 1963.

Wm. H. Ponder, Judge Ad Hoc.

[File endorsement omitted]

[fol. 156]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

BILL OF EXCEPTION NUMBER TWENTY-THREE

Be It Remembered that upon the trial of this cause, before the argument had begun, defense counsel presented to the Court for its consideration a proposition of law, as a charge would be presented were the case tried by a jury, and requested the ruling of the Court on this proposition which was numbered Sixteen and reads as follows:

> "Men are entitled to speak as they please on matters vital to them; errors in judgment or unsubstantiated opinions may be exposed, but not through punishment for the expression. Under our system of government, counterargument and education are the weapons available to expose these matters, not abridgment of the right of free speech. *Wood* v. *Georgia*, 370 U.S. 375."

The Court rejected Proposition of Law No. 16 as an incorrect statement of the expression of the Court in *Wood* v. *Georgia* because the words "for contempt" had been omitted; further because the case of *Wood* v. *Georgia* was a contempt proceeding and the Court in that case was considering whether or not the out of court statements presented a clear and present danger to the administration of justice and whether or not the contempt power to punish for the statements abridged that defendant's right of free speech;

and further because the proposition was not in his opinion pertinent to the facts of the instant case.

To which ruling the defendant through his counsel reserved a bill of exception and stated as his reason therefor that *Wood* v. *Georgia* applies primarily to freedom of speech under the United States Constitution, and whether [fol. 157] the challenge to that right is by a contempt proceeding, a defamation proceeding, or any other proceeding is entirely immaterial.

If the cloak of freedom of speech is present, it protects the defendant in this case from all challenges to freedom of speech, including the instant charges; the rights of the First Amendment to the United States Constitution cannot be abridged by any or jurisprudence law of the State of Louisiana. Defense counsel included in this bill all of the testimony in the case, the entire record of the case, his request for Proposition of Law No. 16, his Honor's ruling thereon, the reason therefor and the statement of defense counsel in support of the said proposition of law.

And, There Being error to the prejudice of the defendant, your defendant, Jim Garrison, through his counsel aforesaid, files this, his formal Bill of Exception, and tenders the same to the Court pursuant to the statute in such case made and provided, which is done accordingly on this day of , 1963.

....., Judge.

[File endorsement omitted]

[fol. 158]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

PER CURIAM TO BILL OF EXCEPTION NUMBER TWENTY-THREE

This bill of exception was reserved to proposition of law number sixteen, which was rejected for the reason that it is not a correct statement of the expression of the Court in Wood v. Georgia, 370 U.S. 375. Whether purposely or not, the words "for contempt" are left out of the quotation between the word "through punishment" and "for the expression." Therefore, the holding in that case is that one might not be "*punished for contempt*" for the expression." It will be noted here that the case of Wood v. Georgia, supra, was a contempt proceeding and the court in that case was considering whether or not the out-of-court statements made presented a clear and present danger to the administration of justice and whether or not the contempt power to punish for the statements abridged the right of free speech.

It might also be noted that in the case of Wood v. Georgia the petitioner had been denied the right to prove the truth of his allegations; the trial court holding irrelevant the truth or falsity of the facts and opinions expressed in the publication.

Defamation and contempt proceedings are dissimilar. Statements may be made by which one could be punished for contempt, as presenting a clear and present danger to the administration of justice, that are non-defamatory. On the other hand, defamatory statements may be made and are subject to the penalties of the law that have nothing [fol. 159] whatever to do with contempt or the administration of justice. It goes without saying that principles of law are applied to the facts in the case, and I did not find this *wholly correct* or wholly pertinent to the facts in this case; particularly that it was a partial statement taken out of context on an entirely different factual situation.

I therefore sign this bill of exception as explained and subject to this per curiam attached.

Thus Done and Signed this 28th day of February, 1963.

Wm. H. Ponder, Judge Ad Hoc.

[File endorsement omitted]

[fol. 160]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

BILL OF EXCEPTION NUMBER TWENTY-FOUR

Be It Remembered that upon the trial of this cause, before the argument had begun, defense counsel presented to the Court for its consideration a proposition of law, as a charge, would be presented were the case tried by a jury, and requested the ruling of the Court on this proposition which was numbered Seventeen and reads as follows:

> "Actual malice cannot be inferred from any qualifiedly privileged statement. It must be proven by extrinsic evidence of hatred, ill will or the wanton desire to injure on the part of the accused."

The Court qualified Proposition of Law No. 17 by the Supreme Court of Louisiana's decision in *State* v. *Lambert*, 188 La. 968, 178 So. 508, in which the court said:

> "If the privilege is only qualified the onus lies on the plaintiff in a civil suit or on the State in a criminal prosecution of proving actual malice. This may be done either by extrinsic evidence of personal ill feeling or by intrinsic evidence, such as the exaggerated language, the mode and extent of the publication, and other matters in excess of the privilege. Odgers on Libel and Slander, 2nd Ed., P. 439."

The Court also qualified this proposition of law by the statement that the State must prove malice where there is a qualifiedly privileged statement.

To which ruling, the defendant, through his counsel, excepted and stated as his reason therefor that the State must prove malice in all cases of criminal defamation, whether a qualified privilege exists or not; that in cases of qualified privilege the State must prove actual malice; in cases where [fol. 161] the qualified privilege does not exist, the State must prove legal malice. The State must carry the burden of proof of malice in all cases of criminal defamation.

Defense counsel included in this bill of exception all of the testimony in the case, the entire record, his request for Proposition of Law No. 17, his Honor's ruling thereon, his reason therefor, and the statement of defense counsel in support of the said proposition of law.

And, There Being error to the prejudice of the defendant, your defendant, Jim Garrison, through his counsel aforesaid, files this, his formal Bill of Exception, and tenders the same to the Court pursuant to the statute in such case made and provided, which is done accordingly on this day of , 1963.

....., Judge.

[File endorsement omitted]

[fol. 162]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

PER CURIAM TO BILL OF EXCEPTION NUMBER TWENTY-FOUR

This bill of exception was reserved to a proposition of law number seventeen, in which the proposition was *granted* and not rejected. I do not know the purpose of this bill for the reason that the proposition of law was correct in principle, although incomplete; actual malice has many

other definitions under which it might be proven by extrinsic evidence. In charging myself as to the law I have a right to make the same qualification or explanation in connection with other laws and decisions that I would be charging a jury, where the proposition of law charged is incomplete. Therefore, I had the right to qualify this statement of law by taking into consideration other principles of law and decisions of the courts to complete it so that it would be clearly set forth.

The State must prove actual malice where there is a qualifiedly privileged statement under the provision of LSA-R.S. 14:49. It may be proven by extrinsic evidence of hatred, ill will, spite, enmity, etc. or the wanton desire to injure on the part of the defendant.

It was further qualified by the statement made in the case of State v. Lambert, 188 La. 968, 178 So. 508, as taken in connection with the reading of the cases as a whole, in which the court said:

> "(5, 6) If the privilege is only qualified the onus lies on the plaintiff in a civil suit or on the State in a criminal prosecution of proving actual malice. This may be done either by extrinsic evidence of personal ill feeling or by intrinsic evidence, such as the exaggerated language, the mode and extent of the publication, and other matters in excess of the privilege. Odgers on Libel and Slander, 2nd Ed., p. 438."

[fol. 163] My reason for qualifying it was that my impression was that it sought *to restrict the proof of actual malice to extrinsic evidence only, of hatred, ill will or wanton desire to injure on the part of the accused.*

Actual malice is susceptible to other definitions also and could be proven by extrinsic evidence under those definitions, and the State is not restricted in proving actual malice by any other legal means.

It was also qualified by the provisions of LSA-R.S. 14:49, which provides that the State must prove actual malice, whether the statement is true or false, under the provisions of said article.

Counsel for defendant (transcript of evidence page 644) made the statement as to how he appreciated the ruling in that the effect was that the State must prove malice in cases only involving qualified privilege. I do not see how this appreciation was arrived at as I was discussing nothing more than the law of actual malice and a qualifiedly privileged statement as requested by counsel.

Counsel has in this bill of exception set up an additional explanation after ruling, stating his reasons therefor the proof of malice in all cases. This question could not be raised after the requested charge was given because there was no request made of the court for a charge as to the law on a non-qualifiedly privileged statement or legal malice. Therefore, counsel has set up in this bill of exception the question of legal malice where there is no qualified privileged statement, which was not requested of the court in the charge; and, of course, this additional reason asserted after the court has ruled on the proposition of law submitted does not make it a proposition of law or a charge that should [fol. 164] have been passed upon and should form no part of the bill of exception. It is a recognized principle of law that a judge is presumed to know the law and does not have to charge himself on any question of law not requested in a misdemeanor case tried by the judge alone.

The requested charge was *granted* but was qualified for the reason that it was not a complete statement of the law of proof of actual malice and was not a *wholly* correct statement of the law as applied to the facts in this case.

I therefore sign this bill as explained and subject to this per curiam attached.

Thus Done and Signed this 28th day of February, 1963.

Wm. H. Ponder, Judge ad hoc.

[File endorsement omitted]

[fol. 165]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

BILL OF EXCEPTION NUMBER TWENTY-FIVE

Be It Remembered that the Court rendered a verdict of guilty as charged against the defendant in this cause, whereupon before sentence was imposed, defendant through counsel filed a motion for a new trial which motion set forth allegations of error to the prejudice of the accused, a copy of which motion is attached hereto and made part hereof by reference as fully as though copies herein in extenso; that the Court denied the motion for a new trial, to which ruling the defendant, through his counsel, excepted and reserved a Bill of Exception incorporating therein all of the testimony and evidence introduced at the trial of this case, the entire record in the case, the motion for a new trial and the Court's ruling thereon.

And, There being error to the prejudice of the defendant, your defendant, Jim Garrison, through his counsel aforesaid, files this, his formal bill of exception, and tenders the same to the Court pursuant to the statute in such case made and provided, which is done accordingly on this day of , 1963.

....., Judge.

[File endorsement omitted]

[fol. 166]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

PER CURIAM TO BILL OF EXCEPTION NUMBER 25

This bill of exception was reserved to overruling of motion for a new trial. I was of the opinion that the evidence in the record supported the judgment of the court and was not contrary to the law and the evidence in the case. I was further of the opinion that most of the allegations in the motion for a new trial were based upon bills of exception which were filed, and which have been heretofore ruled upon as explained in my per curiam to the bills; and I found no merit in this motion for a new trial for those reasons, and other reasons.

Applying myself particularly to paragraph nine of the motion for a new trial, nowhere in my rulings will it be found that I permitted hearsay statements of other persons, whose identities were unrevealed and unknown, for the alleged purpose of showing that the judges were subjected to hatred and ridicule as a result of the statements of the defendant. Each time an objection was made I specifically ruled out any details of these conversations and that no evidence was admissible of any statements made outside of the presence of the defendant.

Addressing myself to paragraph ten of the motion for a new trial, there was no error in not accepting all propositions of law as submitted to the court by the defense. Bills of exception were reserved only to some of them, and these have been discussed in my per curiam attached to each bill [fol. 167] of exception. On those propositions of law on which no bill of exception was reserved, no question can be raised on a motion for a new trial, but should have been raised prior to verdict in the case.

Therefore, I sign this bill as explained and subject to my per curiam attached.

Thus Done and Signed this 28th day of February, 1963.

Wm H. Ponder, Judge ad hoc.

[File endorsement omitted]

[fol. 168]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

BILL OF EXCEPTION NUMBER TWENTY-SIX

Be It Remembered That the Court rendered a verdict of guilty as charged against the defendant in this cause, whereupon before sentence was imposed, the defendant, through counsel, filed a Motion in Arrest of Judgment, which said motion set forth that the statute upon which the accused was tried was in violation of the Constitution of the United States, which said motion is attached hereto and made part hereof by reference as fully as though copied herein in extenso; that the Court denied the Motion in Arrest of Judgment, whereupon defendant, through his counsel, excepted and reserved a Bill of Exception, incorporating therein the Motion in Arrest of Judgment, the Bill of Information and the Ruling of the Court.

And, There being error to the prejudice of the defendant, your defendant, Jim Garrison, through his counsel aforesaid, files this, his formal Bill of Exception, and tenders the same to the Court pursuant to the statute in such case made and provided, which is done accordingly on this day of , 1963.

....., Judge.

[File endorsement omitted]

[fol. 169]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

PER CURIAM TO BILL OF EXCEPTION NUMBER 26

This bill of exception was reserved to overruling the motion in arrest of judgment. I did not think that the statutes of the State of Louisiana, under which the bill of information was laid, are unconstitutional, null and void as being in violation of the First Amendment of the United States Constitution as a restriction on the freedom of speech.

Therefore, I sign this bill as explained and subject to my per curiam attached.

Thus Done and Signed this 28th day of February, 1963.

Wm. H. Ponder, Judge ad hoc.

[File endorsement omitted]

[fol. 170] Clerk's Certificate (omitted in printing).

[fol. 173]

IN SUPREME COURT OF LOUISIANA

No. 46,686

STATE OF LOUISIANA

VS.

JIM GARRISON

On Appeal from the Criminal District Court for the Parish of Orleans, State of Louisiana. Honorable William H. Ponder, Judge ad hoc.

OPINION—June 4, 1963

HAMLIN, Justice:

The defendant, Jim Garrison, appeals from his conviction of the offense of Defamation[1] (LSA-R.S. 14:47) and his sentence to pay a fine of $1,000.00 or, in default of payment of said fine, to serve four months in the Parish Prison.

The Bill of Information charging the defendant with the offense of defamation recites:

"Jack P. F. Gremillion, Attorney General for the State of Louisiana, who in the name and by the authority of the said State, prosecutes, in this behalf, in

[1] "Defamation is the malicious publication or expression in any manner, to anyone other than the party defamed, of anything which tends:

"(1) To expose any person to hatred, contempt, or ridicule, or to deprive him of the benefit of public confidence or social intercourse; or

"(2) To expose the memory of one deceased to hatred, contempt, or ridicule; or

"(3) To injure any person, corporation, or association of persons in his or their business or occupation.

"Whoever commits the crime of defamation shall be fined not more than three thousand dollars, or imprisoned for not more than one year, or both." LSA-R.S. 14:47.

proper person comes into the Criminal District Court for the Parish of Orleans, in the Parish of Orleans, and gives the said Court here to understand and be [fol. 174] informed that one Jim Garrison late of the Parish of Orleans, on the 2nd day of November in the year of Our Lord, one thousand nine hundred and sixty-two with force and arms in the Parish of Orleans aforesaid, and within the jurisdiction of the Criminal District Court for the Parish of Orleans, did wilfully, unlawfully and maliciously defame each, George B. Platt, Judge of Section 'B', Criminal District Court for the Parish of Orleans and the presiding judge thereof, and one Malcolm V. O'Hara, Judge of Section 'A' of the Criminal District Court for the Parish of Orleans, one Edward A. Haggerty, Jr., Judge of Section 'C', Criminal District Court for the Parish of Orleans, one Thomas M. Brahney, Jr., Judge of Section 'D' of the Criminal District Court for the Parish of Orleans, one J. Bernard Cocke, Judge of Section 'E', Criminal District Court for the Parish of Orleans, one Oliver P. Schulingkamp, Judge of Section 'F', Criminal District Court, for the Parish of Orleans, one Shirley G. Wimberly, Judge of Section 'G', Criminal District Court for the Parish of Orleans, and Bernard J. Bagert, Judge of Section 'H', Criminal District Court for the Parish of Orleans, which said judges constitute all the entire bench of the Criminal District Court for the Parish of Orleans, and did publish and express in the public press of the City of New Orleans to persons other than the parties defamed which said publication and expressions are recited herein below of certain things which tend to expose to hatred, contempt and ridicule and deprive such persons of their benefit of public confidence and social intercourse. The said publication and expressions being contained in the following news item reproduced from the New Orleans States-Item, (an afternoon daily newspaper published in the City of New Orleans, Parish of Orleans, published on November 2nd, 1962 which reads as follows, to-wit:

"'TEXT OF GARRISON STAND ON JUDGES

"'The statement by District Attorney Jim Garrison on his feud with the criminal district court judges follows:

"'Apparently the judges have called in all their reserves.

"'(A reference to the joint meeting of all criminal court judges today.)

"'Whatever their resulting statement turns out to be, I doubt if the facts will be much more accurate than those in Judge (William J.) O'Hara's statement.

"'I will cite some glowing examples of misrepresentation of facts.

"'First of all is the attempt made to counterattack by imputing to this office the responsibility for the overcrowded conditions of the Parish Prison.

[fol. 175] "'Judge O'Hara makes the fantastic implication that somehow the system of operation of my office has created this condition. The short reply to this untruth is that the Parish Prison was vastly overcrowded the day we were sworn in.

"'There was not only a backlog of untried cases then . . . there has been for years.

"'For example, the judge admits in his own statement that the (Leon D.) Hubert office inherited a backlog of 3500 cases. When we came into office in May, the backlog had risen to approximately 4600 cases.

"'Inasmuch as the judges have been the only continuing caretakers of the criminal courts operations over the years, it is pretty obvious where the real responsibility lies for the revised backlog of untried cases.

"'District attorneys come and go every four years but the judges and the backlog always seems to be here.

"'Furthermore, I am sure that Judge O'Hara knows that no district attorney's office in years has pushed more cases to trial than we have in our first six months of office.'

"'We have prosecuted approximately 40 jury trials already—despite the fact that the winter term of the courts has just begun.

"'An objective study by an outside agency will reveal that this is at least as many trials as were held the last two years prior to our arrival.

"'To go on to another misrepresentation, Judge O'Hara has made the incredible statement that we have pulled our investigators away from the courts. The truth is that our investigators are with the trial assistant, invariably within arm's reach of the assistant, in full sight of the judge in every courtroom throughout every trial.

"'Obviously this is nothing more than a petulant slap at our use of investigators to uncover vice conditions in the city—an operation with which the judges have shown a remarkable lack of sympathy.

"'As a matter of fact, so opposed have the judges been to our vice investigations that they completely blocked us off from our Bourbon Street investigations of B-drinking and other forms of vice.

"'This was accomplished by the judges tying the purse strings of the district attorney's fines and fees [fol. 176] and informing me that no further money could be used in the investigation of any vice conditions.

"'The judges have specifically directed that the district attorney's office 'should not investigate anything' and informed me that they would allow me to use no further money from my large fines and fees—presently $40,000—for any form of vice investigation.

"'In certain areas where we have spent borrowed money to keep operating against vice—in major handbook operations as well as in B-drinking cases—the judges have instructed me that this money will not be replaced out of fines and fees. I must pay this out of my own pocket.

"'Again the message from the judges is clear. They do not want the district attorney's office to investigate anything.

"'Interestingly enough, had I let them stop me in August as they attempted to do, I would not have been able to keep the pressure on the Canal Street B-joints, which ultimately resulted in the closing of all of them.

"'I succeeded in keeping up the pressure on these places, despite the judges' tying of the purse strings, by my personal loan from the Bank of New Orleans.

"'The judges have now made it eloquently clear where their sympathies lie in regard to aggressive vice investigations by refusing to authorize use of the DA's funds to pay for the cost of closing down the Canal Street clip joints . . . closed them, despite their (the judges') obvious attempts to block me, they now seek to slap the DA on the wrist by making him pay for this successful operation out of his pocket.

"'Again the message is clear: 'Don't rock the boat, son. You are not supposed to investigate anything.'

"'This raises interesting questions about the racketeer influences on our eight vacation-minded judges. This is a matter regarding which I will have [much[2]] more to say a little later.

"'To go on to another misrepresentation of Judge O'Hara's statement, I am sure that he well knows that we did not throw out the trial preparation system of Mr. Hubert.

[fol. 177] "'That was junked four years ago by the preceding DA's office and there was no comment by Judge O'Hara about its disappearance throughout the four years.

"'As a matter of fact, this office gives special attention to the preparation of trial and has adopted a number of the excellent trial preparations of the Hubert era.

"'To give a specific example, our office now is in the process of printing for distribution to every criminal defense attorney and every court the trial docket for the month to come.

---

[2] The word "much" is contained in the newspaper article.

"'Our setting of particular cases on particular dates is so arrived at to avoid such conflicts as having cases in different courts by defendants or an attorney on the same day.

"'Interestingly enough, this program was abandoned by the previous DA's administration, and again there was not a word from Judge O'Hara.

"'O'Hara has now developed—subsequent to his retirement—a concern for the efficient operation of the trial dockets.

"'Actually, the time for Judge O'Hara to be active in his concern for the district attorney's office was during the preceding four years when there was a complete breakdown of vice prosecution and prosecution of cases in every area.

"'So complete was this breakdown that in the last several years there were almost no trials of any kind for commercialized vice. The judge at no time expressed any concern for this breakdown of the prosecution office.

"'The first discernible interest on their part with regard to the district attorney's handling of vice cases arrived the past summer when it became apparent that this office was achieving success in its effort to eliminate the B-drinking racket in New Orleans.

"'This is when, to my astonishment, I suddenly received instructions—through Judge O'Hara himself, speaking for the rest of the judges—that I could no longer spend any money out of fines and fees for anything.

"'Since this was in August—there was not to be an en banc meeting until October when all the judges returned from their vacations—this would have had the effect of blocking our vice investigations. This is [fol. 178] when I borrowed money from the bank and continued to investigate B-drinking in spite of the judges.

"'If the judges would show half as much interest in solving dangerous overcrowded conditions of the Parish Prison, and this overcrowding has been pres-

ent for years not just the last few weeks, as they have shown in their successful attempts at completely blocking the anti-B-drinking operations of my office; the Parish Prison problem would be ended overnight.

"'The efficiency and dispatch with which the judges of the present court stopped my undercover investigations of B-drinking and the resolve which they demonstrated in their uniform opposition to any continued vice investigation by this office would gladden the heart of any efficiency expert.

"'It is unfortunate that there is no comparable interest on their part with regard to the problem of inmates awaiting trial month after month in the Parish Prison.

"'It is incredible that in this country in 1962 that a man could wait 19 months before his case is disposed of, during which period the judge enjoyed over 300 days vacation.

"'There are now approximately 520 prisoners awaiting trial out of a prison population of 758.

"'I think this is an outrageous condition which should be answered not by petulant words by the judges but by action—to immediately increase the number of trial days of this court so that the men can be brought to a speedy trial.'

contrary to the form of the Statute of the State of Louisiana in such case made and provided and against the peace and dignity of the same.

(Signed) Jack P. F. Gremillion
Attorney General for the
State of Louisiana"

The record reflects that the statement or expression set forth in the foregoing Bill of Information was given by the defendant, Jim Garrison, District Attorney for the Parish of Orleans, to the New Orleans press and published by said press, after the judges of the Criminal District Court [fol. 179] refused to sign orders for the payment of funds out of the Fines and Fees Fund for expenditures of the

District Attorney. The District Attorney had taken no legal steps to compel the judges to sign said orders.

The Bill of Information, supra, was filed shortly after defendant's statement was published.

On November 13, 1962, the Supreme Court of the State of Louisiana appointed Honorable William H. Ponder, Judge of the Eleventh Judicial District Court, to sit as Judge ad hoc for the Criminal District Court for the Parish of Orleans for the trial of the instant cause, No. 177-418 of the Docket of the Criminal District Court for the Parish of Orleans, entitled, "State of Louisiana versus Jim Garrison." Article VII, Section 12, of the Louisiana Constitution of 1921. LSA-R.S. 15:307. The order was effective immediately. The Presiding Judge of Section "C" of the Criminal District Court, to which section this case had been assigned, recused himself, and Judge Ponder ascended the Bench for the commencement of trial.

The defendant thereafter filed a Motion to Recuse, alleging:

> "That the Honorable P. F. Jack Gremillion, Attorney General for the State of Louisiana, who prosecutes this case in the name of the State of Louisiana, has publicly stated in the public press and otherwise, his belief that the integrity of the entire judiciary of the State of Louisiana is an issue in this case and has thus announced his intention of making the integrity of the Louisiana judiciary an issue in the trial thereof; that the said utterances and the proposed trial have had and will have the effect of making the entire judiciary of the State of Louisiana an interested party to this case within the meaning of the recusation statutes of the State of Louisiana.
>
> "That the constitutional and statutory provisions of the State of Louisiana authorizing the arbitrary appointment by the Louisiana State Supreme Court of a trier of fact for a particular case, are unconstitutional and null and void as violative of the due process provisions of the Fourteenth Amendment, and that the ap- [fol. 180] pointment of the said Honorable William H. Ponder, under color of authority of the said provisions

of the Louisiana State Constitution and Revised Statutes, is therefore null and void and of no force and effect."

The trial judge denied the above Motion to Recuse, and Bill of Exceptions No. 1 was reserved to his ruling.

In this Court appellant argues that:

"• • • the Honorable William H. Ponder prejudged this case, and had *already*—subconsciously—found the accused guilty of defamation when the trial began on January 21, 1963. In support of this contention we call the Court's attention to the fact that from the first moments of the trial, and continuously thereafter during the many days which the trial lasted, Judge Ponder referred in no uncertain terms to the per curiams which he would write in this case. No citation of authority is needed to prove that, once jeopardy has set in, per curiams are only written by a trial judge in the event the accused is found guilty and appeals from his judgment of conviction. • • •"

Appellant further states:

"It is the position of the accused that whether his guilt or innocence was to be determined by a judge or a jury, he was not provided with due process of law if the trier of fact was subject to arbitrary selection, particularly by the judiciary of the State of Louisiana. Even without the judiciary's interest in this matter, such an appointment would not provide a defendant in a misdemeanor case with due process since the logical extension of such a procedure could be to give the Supreme Court the power to appoint the jury in a felony matter. It is submitted that only a jury properly drawn, selected and empaneled, or a judge who has been duly elected to an office specifically empowered to decide guilt or innocence in criminal cases in a particular jurisdiction provides an accused with due process of law.

• • • • • • • •

"In the instant case the Criminal District Court Judges took a most active and vigorous part in the prosecution of this accused. The integrity of the entire state judiciary was threatened and questioned by the widely publicized opinion of the Attorney General. In the minds of the general public this case became the case of the District Attorney versus the Judiciary. A verdict for the defendant would have condemned the judiciary, particularly in the eyes of the public. The judiciary could not stand in a position of the accusors, the judge, the jury and the executioners and give Jim Garrison a constitutional trial."

[fol. 181] Article VII, Section 10, of the Louisiana Constitution of 1921, provides that the Supreme Court of the State of Louisiana shall have control of and general supervision over all inferior courts. Article VII, Section 12, of the Louisiana Constitution of 1921, empowers this Court to make an appointment such as was made herein. The appointment was therefore not in violation of any of the provisions of the State Constitution. We find no federal prohibition with respect to an appointment such as the instant one; it therefore follows that defendant's complaints with respect to a violation of the Fourteenth Amendment to the United States Constitution are without merit. The record is barren of any showing that the defendant suffered prejudice by the refusal of the trial judge ad hoc to recuse himself. LSA-R.S. 15:557. Defendant's arguments that he was deprived of due process of law, and that the Bill of Information should be dismissed because there is no proper judge in the State of Louisiana to try him, are also without merit.

LSA-R.S. 15:303[3] sets forth the causes for which any

[3] "The causes for which any judge in any criminal case shall be recused, shall be as follows: (1) His being interested in the cause; but in any cause in which the state, or one of its political subdivisions, or any religious corporation, is interested, the fact that the judge is a citizen of the state or a resident of the political subdivision, or pays taxes thereto, or that he is a member of the religious corporation, shall not constitute a ground for recusation. (2) His being the spouse of the accused or the party injured or

judge in any criminal case shall be recused; none of these causes are applicable to the instant trial judge. A reading of the Motion to Recuse reflects that it contains general statements of conclusions, which do not constitute grounds [fol. 182] for recusation. Under the circumstances, the trial judge could rule upon the Motion to Recuse, and he acted properly in ruling upon it.

> "The jurisprudence of this State is well-settled that if the allegations of the petition for the recusation of a judge are mere general statements of conclusions that the judge is prejudiced and biased against or hostile to the defendant because of personal or political reasons, or that if the petition does state facts which, if proved, would not constitute a legal ground for recusation, the judge who is sought to be recused may himself overrule the motion and need not refer it to another judge for trial. * * * " State v. Doucet, 199 La. 276, 5 So. 2d 894. See, State v. Laborde, 214 La. 644, 38 So. 2d 371.

As stated supra, defendant argues that the trial judge had prejudged this case, and had *already*—subconsciously—found the accused guilty of defamation when the trial began on January 21, 1963. Defendant cites, among others, the following remarks of the trial judge:

> " * * * The Court has sustained any statements made after the objection has been made. It will be more fully covered in the per curiam of the Court. * * * "
>
> " * * * The Court will set forth more fully its legal reasons for this ruling on these bills of ex-

---

one of the attorneys; his being related to the accused or to the party injured or to the spouse of the accused or the party injured within the fourth degree, or to one of the attorneys or to the spouse of one of the attorneys within the second degree. (3) His being a material witness in the cause. (4) His having been employed or consulted as an attorney in the cause or his having been associated with an attorney during the latter's employment in the cause. (5) His having performed any judicial act in the cause in any other court." LSA-R.S. 15:303.

ception in its per curiam, which will be attached to and made part of the bill of exceptions."

"• • • the Court allows it to be admitted, and the Court will assign its reasons for the admission in a per curiam, which will be attached to the Bill of Exception, • • • "

We do not agree with counsel's argument;[1] the record is replete to the effect that the trial judge did not prejudge this matter. It is clear to us that an experienced judge such as Judge Ponder (the trial judge herein) meant that he would amplify his rulings in his per curiams in the [fol. 183] event of an appeal. Before rendering judgment, he aptly stated:

"• • • So in referring to my *per curiam*, the question of the *per curiam*, throughout the trial of the case, I want to qualify that to the extent that I intended, and if there be—there was no pre-judging of the case, but if there were intended to be reserved a bill of exception at any time during the trial of the case, my per curiam would further amplify my reasons."

Bill of Exceptions No. 1 is without merit.

Bill of Exceptions No. 2 was reserved to the trial court's overruling of defendant's application for a Bill of Particulars. The application set forth the following questions:

"1.

"What are the exact words, phrases and/or sentences of the statement set forth in the Bill of Information that are alleged to be defamatory as to the judges named in the said Bill of Information?

---

[1] Defendant states in brief, "Of course we realize that there was no conscious prejudging of Garrison's case by Judge Ponder. • • • "

"2.

"What are the exact words, phrases and/or sentences contained in the said quoted statement that tend to expose to hatred, contempt or ridicule the judges of the Criminal District Court named in the said Bill of Information, or to deprive them of their benefit of public confidence and social intercourse?

"3.

"Does the State contend that the statement of the defendant set forth in the Bill of Information contains any allegations of fact which are not true?

"4.

"If the answer to Paragraph 3 above is in the affirmative, please set forth the exact words, phrases, and/or sentences containing allegations of fact which are alleged by the State to be untrue."

The State answered the above questions as follows:

[fol. 184] "I.

"The State will rely upon the entire article as quoted in the Bill of Information.

"II.

"The State will rely upon the entire article as quoted in the Bill of Information.

"III.

"The State will contend that the statement of the defendant set forth in the Bill of Information constitutes malice in law and also malice in fact.

"IV.

"The entire expression and publication as quoted in the Bill of Information will be used as the basis on the trial as the alleged violation of the statute. The

State will also prove the allegation of fact that the said statement was made and published by the said defendant on the date set forth in the indictment."

In this Court defendant contends that:

"In failing to order the State to tell this accused the exact words, phrases and sentences in the November 2 statement which the State contended were defamatory or untrue, the trial judge abused the discretion vested in him by Article 288 of the Code of Criminal Procedure,[5] R.S. 15:288, to the detriment and disadvantage of the accused. See *State* v. *Butler*, 229 La. 788, 86 So. 2d 906.[6] The statement which forms [fol. 185] the basis of this prosecution is quite long, and the trial court placed an unfair burden on this accused when it denied the Application."

Initially it is to be observed that when a party is charged with criminal defamation, "The words contained in the statement are to be given their ordinary meaning unless

[5] "Defects in indictments can be urged before verdict only by demurrer or a motion to quash, and the accused is not entitled to any bill of particulars as to the subject-matter charged in the indictment, but the trial judge may, in his discretion, require the district attorney to file in the case such data as, in the opinion of the judge, may be sufficient."

[6] In State v. Butler, 229 La. 788, 86 So. 2d 906, the defendant was charged with unlawfully possessing, having under his control, selling, and delivering marijuana. The State refused to answer his application for a bill of particulars. Pertinent information sought was the names of the persons to whom defendant was alleged to have sold and to have delivered the marijuana. This Court granted defendant a new trial, stating, "However, while it is discretionary with the trial judge, he cannot arbitrarily refuse to order the State to furnish 'essential particulars.' That is exactly what the trial judge refused to do in this case." In a per curiam written on refusal of an application for rehearing, we stated that this Court must decide each case on the issues presented; and, in the matter involved, after considering the language of the bill of information, we said that we were of the opinion that the accused was entitled to the information sought so that he could adequately prepare his defense, and that in refusing to order the State to furnish the information the trial judge abused his discretion.

it is shown that they were capable of being used and were in fact used with a different meaning. The meaning of the statement is to be determined from an examination of the statement as a whole. The statement is to be interpreted in the light of the surrounding circumstances, and words apparently innocent may be shown to have been defamatory in fact." Wharton's Criminal Law and Procedure, 1957, Volume II, Section 884, Page 750. In State v. Lambert, 188 La. 968, 178 So. 508, (a prosecution in which the defendant was charged with libel), we held that in analyzing a document and determining its legal effect, the document must be considered as a whole. In interpreting articles of the Louisiana Criminal Code, LSA-R.S. 14:3 provides that the articles of the Code cannot be extended by analogy so as to create crimes not provided for therein; and, in order to promote justice and to effect the objects of the law, all of the provisions shall be given a genuine construction, according to the fair import of their words, taken in their usual sense, in connection with the context, and with reference to the purpose of the provision.

Under the circumstances of this case, we find that the State's answer (Art. IV, supra), to the effect that the entire expression and publication as quoted in the Bill of Information would be used as the basis on the trial as the alleged violation of the statute, was sufficient to enable the defendant to adequately prepare his defense. Additionally, the State informed the defendant (Art. III, supra) that it would contend that the statement of the defendant set forth in the Bill of Information constituted malice in law and also malice in fact. We conclude that there was no [fol. 186] need for the State to further particularize exact words, phrases, and sentences.

> "• • • The State is not required to reveal in advance of the trial the facts on which it will rely in seeking a conviction." State v. Mills, 229 La. 758, 86 So. 2d 895, Cert. denied, 77 S. Ct. 51, 52, 352 U.S. 834, 1 L. Ed. 2d 53.

The proper function of a Bill of Particulars is to inform the accused in greater detail of the nature of the crime of

which he is charged. State v. Simpson, 216 La. 212, 43 So. 2d 585, Cert. denied, 70 S. Ct. 625, 339 U.S. 929, 94 L. Ed. 1350. We find that the answer of the State in the instant case performed the proper function of giving the defendant the details he required.

The trial judge exercised the discretion vested in him by LSA-R.S. 15:288 (Footnote 5, supra). We find that he did not abuse his discretion; we also find that the defendant did not suffer prejudice by the trial judge's overruling of the Motion for a Bill of Particulars. LSA R.S. 15:557.

> "The complaint is without substance. The granting or refusal of a bill of particulars addresses itself to the sound discretion of the trial judge. State v. Agusta, 199 La. 896, 7 So. 2d 177; Articles 235, 288, Code of Criminal Procedure. * * * " State v. Poe, 214 La. 606, 38 So. 2d 359.

> "We reiterate that the matter of furnishing a Bill of Particulars rests largely in the discretion of the trial judge, and his discretion will not be disturbed unless there is error in the ruling complained of to the detriment or disadvantage of the accused. * * * " State v. Butler, 229 La. 788, 86 So. 2d 906.

Bill of Exceptions No. 2 is without merit.

Bill of Exceptions No. 3 was reserved to the trial court's overruling of defendant's Demurrer and Motion to Quash, which recites:

> "* * * the said Information and the matters therein are, as therein alleged and set forth, not sufficient [fol. 187] in law to compel him, the said Jim Garrison; to answer thereto, for the following reasons, to-wit:
>
> "1.
>
> "That the statement set forth in the Bill of Information attributed to the defendant herein, Jim Garrison, contains no allegations of fact which are defamatory, or which could through any reasonable interpre-

tation, tend to expose to hatred, contempt or ridicule or to deprive of their benefit of public confidence and social intercourse any of the judges of the Criminal District Court therein named as the persons defamed.

"2.

"That the statement set forth in the Bill of Information affirmatively reveals itself to be a comment on the conduct of persons in respect to public affairs and as such protected by a qualified privilege; that despite the allegation of malice contained in the said Bill of Information herein, the statement attributed to the defendant affirmatively shows the absence of malicious motive; that the said statement shows the utterances contained therein to be in response to a previous public criticism by one Judge William O'Hara, and in defense of the defendant's performance of his duties as District Attorney in combating organized vice operations in the City of New Orleans.

"3.

"That to hold the statement set forth in the Bill of Information to be a violation of Revised Statute 14:47 or to interpret the said R.S. 14:47 defining the crime of defamation so as to include within the scope thereof the statement set forth in the Bill of Information in this case would violate the provisions of the First Amendment of the Constitution of the United States prohibiting abridgment of freedom of speech as the said amendment is made applicable to the State of Louisiana through the Fourteenth Amendment of the United States Constitution."

In this Court defendant argues:

"1. *The criminal statutes defining defamation under which the charge against Garrison has been brought, Articles 47-50 of the Louisiana Criminal Code, R.S. 14:47-50, as well as that portion of Article 1, Section 3, of the Louisiana Constitution authorizing such laws,*

are absolutely null and void in that they are prohibited by the First Amendment to the United States Constitution, guaranteed to citizens of the states by the Due Process Clause of the Fourteenth Amendment to that Constitution.

"A. Any law which in any fashion curtails freedom of expression violates the First Amendment to the Federal Constitution.

[fol. 188]. "B. In the alternative, these statutes are phrased in such broad general terms that they cover activities that in ordinary circumstances constitute an exercise of freedom of speech or of the press, and for this reason Articles 47-50 are void.

"C. Articles 47-50 fail to provide the procedural safeguard of a trial by jury which is essential to the protection of First Amendment rights.

"2. *In the alternative it is contended that in the event Articles 47-50 defining the crime of defamation, R.S. 14:47-50, are found not to violate the Federal Constitution, still the accused's conviction of defamation for the statements set out in the bill of information filed herein deprives him of his right to freedom of expression, guaranteed to citizens of Louisiana by the Due Process Clause of the Fourteenth Amendment and the First Amendment to the United States Constitution.*"

Defendant also contends that the trial judge committed error in his refusal to apply the "Clear and Present Danger" test to this prosecution.

In his per curiam, the trial judge states that he would not pass upon defendant's first contention that the statement set forth in the Bill of Information was not defamatory so as to bring it within the statutory provisions of L.S.A-R.S. 14:47, because he did not think that the contention was properly presented on a Motion to Quash. He said that qualified privilege and malice were involved,

and that proof thereof would require evidence, particularly on the issues of truth or falsity.

In State v. Lambert, 188 La. 968, 178 So. 508, we said, "The question as to whether a communication is privileged involves questions of fact as well as of law. State v. Whitmire, 166 La. 195, 116 So. 849. Where the facts are not disputed the question of privilege becomes one of law. Odgers on Libel and Slander, 2d Ed., Sec. 183, p. 216; Newell on Slander and Libel, 4th Ed., Sec. 345, p. 385." In State v. Masino, 214 La. 744, 38 So. 2d 622, we held that [fol. 189] evidence may be taken on a Motion to Quash an indictment, but evidence is limited to procedural matters and may not include a defense on the merits.

In the publication set forth in the Bill of Information, the defendant states, among other things, that, "* * * it is pretty obvious where the real responsibility lies for the revised backlog of untried cases"; that, "* * * so opposed have the judges been to our vice investigations that they completely blocked us off from our Bourbon Street investigations of B-drinking and other forms of vice"; that, "This raises interesting questions about the racketeer influences on our eight vacation-minded judges. * * *"; that, "* * * a man could wait 19 months before his case is disposed of, during which period the judge enjoyed over 300 days vacation"; and that, "There are now approximately 520 prisoners awaiting trial out of a prison population of 758." These are all assertions of fact which require the hearing of evidence.

We therefore find that the trial judge could not have passed upon the contention raised by the defendant in the first paragraph of his Demurrer and Motion to Quash without hearing evidence on matters other than procedural ones; under the jurisprudence, supra, he was correct in his ruling.

In his per curiam, the trial judge further states that he would not pass upon defendant's second contention that the Bill of Information is a comment on the conduct of persons in respect to public affairs and as such protected by a qualified privilege, because, "* * * the defendant would necessarily have to have a reasonable belief as to the truth

of his comment as set forth in LSA-R.S. 14:49.[7] Also, it is [fol. 190] well established that proof of actual malice may destroy a qualified privilege.[8] Therefore, this could only be determined after trial, and was not such as would authorize the sustaining of a motion to quash."

We find that the trial judge was correct in not passing on the second contention raised in defendant's Demurrer and Motion to Quash. Reviewed in association with LSA-R.S. 14:48-49, it shows that it presents matters on which evidence would have had to be heard during trial; it was therefore not subject to the pleadings advanced.

[fol. 191] In our discussion of the third contention raised in the Demurrer and Motion to Quash, we initially observe

---

[7] "A qualified privilege exists and actual malice must be proved, regardless of whether the publication is true or false, in the following situations: (1) Where the publication or expression is a fair and true report of any judicial, legislative, or other public or official proceeding, or of any statement, speech, argument, or debate in the course of the same. (2) Where the publication or expression is a comment made in the reasonable belief of its truth, upon, (a) The conduct of a person in respect to public affairs; or (b) A thing which the proprietor thereof offers or explains to the public. (3) Where the publication or expression is made to a person interested in the communication, by one who is also interested or who stands in such a relation to the former as to afford a reasonable ground for supposing his motive innocent. (4) Where the publication or expression is made by an attorney or party in a judicial proceeding."

[8] "Where a non-privileged defamatory publication or expression is false it is presumed to be malicious unless a justifiable motive for making it is shown.

"Where such a publication or expression is true, actual malice must be proved in order to convict the offender." LSA-R.S. 14:48.

"There shall be no prosecution for defamation in the following situations: (1) When a statement is made by a legislator or judge in the course of his official duties. (2) When a statement is made by a witness in a judicial proceeding, or in any other legal proceeding where testimony may be required by law, and such statement is reasonably believed by the witness to be relevant to the matter in controversy. (3) Against the owner, licensee or operator of a visual or sound broadcasting station or network of stations or the agents or employees thereof, when a statement is made or uttered over such station or network of stations by one other than such owner, licensee, operator, agents or employees." LSA-R.S. 14:50.

that Article I, Section 3, of the Louisiana Constitution of 1921, provides that, "No law shall ever be passed to curtail or restrain the liberty of speech or of the press; any person may speak, write and publish his sentiments on all subjects, *being responsible for the abuse of that liberty.*" (Emphasis ours.) The First Amendment to the United States Constitution recites that, "Congress shall make no law * * * abridging the freedom of speech * * *." The Fourteenth Amendment to the United States Constitution provides that, "* * * No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; * * *".

These constitutional provisions will be considered hereinafter in connection with LSA-R.S. 14:47-50, quoted supra. They will be considered in the light that, "The freedom of speech and of the press secured by the First Amendment against abridgment by the United States is similarly secured to all persons by the Fourteenth against abridgment by a state." Schneider v. Irvington, 308 U.S. 147-165, 60 S. Ct. 146, 84 L. Ed. 155.

In Roth v. United States, 354 U.S. 476, 77 S. Ct. 1304, 1 L. Ed. 2d 1498, we find the following statement with respect to the guaranties of freedom of expression:

> "The guaranties of freedom of expression in effect in 10 of the 14 States which by 1792 had ratified the Constitution, gave no absolute protection for every utterance. Thirteen of the 14 states provided for the prosecution of libel,[9] and all of those States made either blasphemy or profanity, or both, statutory crimes. As early as 1712, Massachusetts made it criminal to publish 'any filthy, obscene, or profane song, pamphlet, libel or mock sermon' in imitation or mimicking of religious services. * * *" (Emphasis ours.)
>
> [fol. 192] "In light of this history, it is apparent that the unconditional phrasing of the First Amendment was not intended to protect every utterance. This

[9] "Libel, slander, and malicious prosecution are all methods of defamation." 53 C. J. S. Libel and Slander, Sec. 1, p. 31.

phrasing did not prevent this Court from concluding that libelous utterances are not within the area of constitutionally protected speech. Beauharnais v. People of State of Illinois, 343 U.S. 250, 266, 72 S. Ct. 725, 735, 96 L. Ed. 919. * * *

* * * * * * *

"All ideas having even the slightest redeeming social importance—unorthodox ideas, controversial ideas, even ideas hateful to the prevailing climate of opinion—have the full protection of the guaranties, unless excludable because they encroach upon the limited area of more important interests. * * *"

In Beauharnais v. People of the State of Illinois, 343 U.S. 250, 72 S. Ct. 725, 96 L. Ed. 919, the defendant was charged by information in that he "did unlawfully . . . exhibit in public places lithographs, which publications portray depravity, criminality, unchastity or lack of virtue of citizens of Negro race and color and which exposes [sic] citizens of Illinois of the Negro race and color to contempt, derision, or obloquy * * *." Beauharnais challenged the statute under which he was charged as being violative of the liberty of speech and of the press guaranteed as against the States by the Due Process Clause of the Fourteenth Amendment. The United States Supreme Court affirmed the conviction, making the following pertinent statements in its decision:

"The statute before us is not a catchall enactment left at large by the State court which applied it. * * * It is a law specifically directed at a defined evil. * * *"

"Libel of an individual was a common-law crime, and thus criminal in the colonies. Indeed, at common law, truth or good motives was no defense. In the first decades after the adoption of the Constitution, this was changed by judicial decision, statute or constitution in most States, but nowhere was there any suggestion that the crime of libel be abolished. Today, every American jurisdiction—the forty eight States, the District of [fol. 193] Columbia, Alaska, Hawaii and Puerto Rico—punish libels directed at individuals. * * *"

> "Every power may be abused, but the possibility of abuse is a poor reason for denying Illinois the power to adopt measures against criminal libels sanctioned by centuries of Anglo-American law. • • • "
>
> "Libelous utterances, not being within the area of constitutionally protected speech, it is unnecessary either for us or for the State courts, to consider the issues behind the phrase 'clear and present danger.' Certainly no one would contend that obscene speech, for example, may be punished only upon a showing of such circumstances. Libel, as we have seen, is in the same class."

The United States Supreme Court has considered a number of cases cited by defendant, in which the defendants who were charged with contempt pleaded the protection of "Freedom of Speech." Before discussing these cases, we feel it pertinent to remark that under our Louisiana law the offense of defamation and the offenses of contempt and constructive contempt are not the same.

Constructive Contempt, West's LSA-C.C.P., Art. 224(8), is defined in part as, "Comment by a newspaper or other medium for the dissemination of news upon a case or proceeding, then pending and undecided, which constitutes a clear, present, and imminent danger of obstructing or interfering with the orderly administration of justice, by either influencing the court to reach a particular decision, or embarrassing it in the discharge of its judicial duties."

In Schenck v. United States, 249 U.S. 47, 39 S. Ct. 247, 63 L. Ed. 470, the United States Supreme Court spoke of "Clear and Present Danger" as follows:

> "• • • The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree. • • • "

[fol. 194] In Bridges v. California, 314 U.S. 252, 62 S. Ct. 190, 86 L. Ed. 192, the defendants were adjudged guilty and

fined for contempt of court; their convictions rested upon comments published in newspapers pertaining to pending litigation. Defendants challenged the State's action as an abridgment, prohibited by the Federal Constitution, of freedom of speech and of the press. In reversing the conviction, the United States Supreme Court stated in the beginning of its opinion that, "It is to be noted at once that we have no direction by the legislature of California that publications outside the court room which comment upon a pending case in a specified manner should be punishable." The Court went on to discuss the theory of evil, stating, "Moreover, the likelihood, however great, that a substantive evil will result cannot alone justify a restriction upon freedom of speech or the press. The evil itself must be 'substantial,' * * *". It found that the evil sought to be avoided was not substantial; it said, "* * * we are convinced that the judgments below result in a curtailment of expressions that cannot be dismissed as insignificant. If they can be justified at all, it must be in terms of some serious substantive evil which they are designed to avert. The substantive evil here sought to be averted has been variously described below. It appears to be double: disrespect for the judiciary; and disorderly and unfair administration of justice." [10]

[fol. 195] Pennekamp v. Florida, 328 U.S. 331, 66 S.Ct. 1029, 90 L.Ed. 1295, concerned contempt proceedings in which the defendant, Associate Editor of the Miami Herald, was charged with being contemptuous of the circuit

---

[10] It is interesting to note that the Louisiana State Supreme Court followed the Bridges rule in a contempt proceeding, Graham v. Jones, 200 La. 179, 7 So. 2d 702 stating: "However, under the decision of the Supreme Court of the United States in the Bridges v. California and Times-Mirror Company v. Superior Court case, this proceeding for contempt against respondent must be discharged. * * * As we have pointed out in our opinion handed down today on the rules for contempt against the three New Orleans newspapers, 7 So. 2d 688, the decision of the Supreme Court of the United States in matters of contempt has repudiated the test of reasonable tendency heretofore prevailing and has substituted therefor the test of clear and present danger. Applying that test to the publication under review, we are bound to hold that there was no clear and present danger that the editorial would or could sway the five members of this Court from acting according to their convictions in declaring that the Reorganization Amendment was unconstitutional."

court and its judges, in that he had published two editorials alleged to be unlawfully critical of the administration of criminal justice in certain cases then pending before the court. The United States Supreme Court reversed the conviction of the State Court on the theory of "Clear and Present Danger," stating, "The comments were made about judges of courts of general jurisdiction—judges selected by the people of a populous and educated community. They concerned the attitude of the judges toward those who were charged with crime, not comments on evidence or rulings during a jury trial. Their effect on juries that might eventually try the alleged offenders against the criminal laws of Florida is too remote for discussion. Comment on pending cases may affect judges differently. It may influence some judges more than others. Some are of a more sensitive fiber than their colleagues. The law deals in generalities and external standards and cannot depend on the varying degrees of moral courage or stability in the face of criticism which individual judges may possess any more than it generally can depend on the personal equations or individual idiosyncrasies of the tort-feasor. * * * We are not willing to say under the circumstances of this case that these editorials are a clear and present danger to the fair administration of justice in Florida. Cf. Near v. Minnesota, 283 U.S. 697, 714, 715, 75 L ed 1357, 1366, 1367, 51 S Ct 625."

[fol. 196] Craig v. Harney, 331 U. S. 367, 67 S. Ct. 1249, 91 L. Ed. 1546, involved contempt proceedings for an editorial challenging a Texas court's procedure. In reversing the conviction, the United States Supreme Court stated:

> "* * * But there was here no threat or menace to the integrity of the trial. The editorial challenged the propriety of the court's procedure, not the merits of its ruling. Any such challenge, whether made prior or subsequent to the final disposition of a case, would likely reflect on the competence of the judge in handling cases. But as we have said, the power to punish for contempt depends on a more substantial showing. Giving the editorial all of the vehemence which the court below found in it we fail to see how it could in

any realistic sense create an imminent and serious threat to the ability of the court to give fair consideration to the motion for rehearing.

"There is a suggestion that the case is different from Bridges v. California * * * in that we have here only private litigation, while in the Bridges Case labor controversies were involved, some of them being criminal cases. The thought apparently is that the range of permissible comment is greater where the pending case generates a public concern. The nature of the case may, of course, be relevant in determining whether the clear and present danger test is satisfied. But, the rule of the Bridges and Pennekamp Cases is fashioned to serve the needs of all litigation, not merely select types of pending cases."

In Wood v. Georgia, 370 U.S. 375, 82 S. Ct. 1364, 8 L. Ed. 2d 569, defendant, an elected sheriff of Bibb County, Georgia, was held in contempt of court for expressing his personal ideas on a matter that was presently before the grand jury for its consideration; his ideas were conveyed to and published by the local press. In reversing the conviction and holding that defendant's right of freedom of speech had been abridged, the United States Supreme Court stated, "Our examination of the content of petitioner's statements and the circumstances under which they were published leads us to conclude that they did not present a danger to the administration of justice that should vitiate his freedom to express his opinions in the manner chosen."

[fol. 197] As stated supra, Article I, Section 3, of the Louisiana Constitution of 1921, provides that a person speaking or publishing his sentiments is responsible for an abuse of that liberty. LSA-R.S. 14:47-50 were enacted pursuant to this provision, and they are specifically directed at a defined evil. It is unnecessary for us to consider the issues behind the phrase "Clear and Present Danger." See, Beauharnais v. People of the State of Illinois, 343 U.S. 250, 72 S. Ct. 725, 96 L. Ed. 919, supra. LSA-R.S. 14:47-50 are an expression of Louisiana legislative will and have to do with the exposing of a person

to hatred, contempt, or ridicule so as to deprive him of public confidence or social intercourse. We find nothing in the jurisprudence reviewed supra which prohibits such enactments as are herein under consideration. Also, as stated supra, Louisiana treats defamation and contempt as separate offenses; the jurisprudence we have heretofore reviewed dealt with the offense of contempt. As stated in the Roth and Beauharnais Cases, supra, libel has always been an offense under both common and statutory law. There have been many prosecutions under the libel laws; when the law and the evidence justified it, the person found guilty had a fine or prison sentence imposed on him. Freedom of Speech guaranteed under the Due Process clause of the Fourteenth Amendment has not been extended to those found guilty. See, Roth and Beauharnais Cases, supra; State v. Lambert, 188 La. 968, 178 So. 508, supra.

We conclude that LSA-R.S. 14:47-50 are not null and void and are not prohibited by the First Amendment to the United States Constitution, guaranteed to citizens of the States by the Due Process Clause of the Fourteenth Amendment to that Constitution.

Defendant's contention that LSA-R.S. 14:47-50 fail to provide the procedural safeguard of a trial by jury is without merit and will be discussed hereinafter.

[fol. 198] In the instant matter, it cannot be gainsaid that the use of the words "racketeer influences" when applied to anyone suggests and imputes that he has been influenced to practice fraud, deceit, trickery, cheating, and dishonesty.[11]

---

[11] racketeer—"* * * a person who obtains money illegally, as by bootlegging, *fraud*, or especially, threats of violence, v.i. to obtain money in any of these ways." (Emphasis ours.)

fraud—"* * * a) deceit; trickery; *cheating*. b) in law, intentional deception to cause a person to give up property or some lawful right. 2. something said or done to deceive; trick; artifice. 3. [Colloq.] a person who deceives or is not what he pretends to be; impostor; *cheat*." (Emphasis ours.)

cheat—"* * * behave *dishonestly* or unfaithfully." (Emphasis ours.)

influence—"* * * 2. a) the power of persons or things to affect others, seen only in its effects. b) the action or

The expression that the judges have enjoyed 300 days vacation out of 19 months suggests and connotes a violation of the "Deadhead" statute, LSA-R.S. 14:138, Public Payroll Fraud.

Other expressions set out in the Bill of Information connote malfeasance in office. LSA-R.S. 14:134, Art. IX, Sec. 1, La. Const. of 1921.

We conclude that the expressions of the defendant, as set out and charged in the Bill of Information were of a defamatory nature; they are alleged to be defamatory and to have been made maliciously; they were not subject to the protection of the First Amendment to the United States Constitution. All that we are considering in this Bill of Exceptions is the legal sufficiency of the Bill of Information and defendant's Demurrer and Motion to Quash filed to the Information. The questions of malice and proof of defamation will be discussed hereinafter.

[fol. 199] Defendant's expressions set out in the Bill of Information are not criticisms of a court trial or of the manner in which any one of the eight judges conducted his court when in session. The expressions charged contain personal attacks upon the integrity and honesty of the eight judges which warranted trial on the merits.

Bill of Exceptions No. 3 is without merit.

Bill of Exceptions No. 4 was reserved to the denial by the trial judge of defendant's motion for trial by jury, which motion recites in part:

> "That the provisions of Article 7, Section 41 of the Louisiana State Constitution authorizing trial by the judge alone in cases of misdemeanor is unconstitutional, null and void in that the said State Constitutional provision is in violation of the Sixth and

---

effect of such power; 3. the power of a person or group to produce effects without the exertion of physical force or authority, based on wealth, social position, ability, etc. 4. a person or thing that has influence."

Webster's New World Dictionary, World Publishing Co., 1957.

Fourteenth Amendments of the United States Constitution, depriving petitioner of his right to trial by jury and depriving him of due process of law.

"That in the alternative defendant alleges that any issue involving the determination of Constitutional rights in general and the right of freedom of speech in particular must be tried by jury under the requirements of the above mentioned United States Constitutional provisions; that the trial of this case will necessarily involve a determination as to certain fundamental Constitutional rights of the defendant and that the trial of this case without jury would serve to deny to defendant due process of law under the Sixth and Fourteenth Amendments of the United States Constitution."

In this Court defendant advances the same contentions as set forth in his motion for trial by jury; he raises the additional argument that the reasoning and holding of the United States Supreme Court in the case of Gideon v. Wainwright, —— U.S. ——, 83 S.Ct. 792, —— L.Ed. 2d ——, decided March 18, 1963, should be applied to the instant bill.

Article VII, Section 41, of the Louisiana Constitution of 1921, provides:

[fol. 200] "* * * *All cases in which the punishment may not be at hard labor shall, until otherwise provided by law, be tried by the judge without a jury.* Cases, in which the punishment may be at hard labor, shall be tried by a jury of five, all of whom must concur to render a verdict; cases, in which the punishment is necessarily at hard labor, by a jury of twelve, nine of whom must concur to render a verdict; cases in which the punishment may be capital, by a jury of twelve, all of whom must concur to render a verdict." (Emphasis ours.)

LSA-R.S. 15:340 recites:

"Every misdemeanor shall be triable by the judge without the intervention of a jury."

LSA-R.S. 15:341 states:

> "A misdemeanor is defined to be an offense, the punishment of which is necessarily a fine or imprisonment in the parish jail or both." [12]

LSA-R.S. 14:47, under which the defendant was charged, provides that, "Whoever commits the crime of defamation shall be fined not more than three thousand dollars, or imprisoned for not more than one year."

Amendment VI to the United States Constitution recites:

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense."

In State v. Hadad, 142 La. 69, 76 So. 243, this Court has held that the provisions of the Sixth Amendment to the United States Constitution relating to jury trials refer to prosecutions for the violation of federal statutes and [fol. 201] not to prosecutions in state courts for violations of state statutes. See, 20 La. L. Rev. 680; Cf. State v. Pailet, 139 La. 697, 71 So. 951. See, also, State v. Harvey, 159 La. 674, 106 So. 28, Cert. denied, 273 U.S. 635, 71 L.Ed. 815, 47 S.Ct. 20.

In State v. Porter, 176 La. 673, 146 So. 465, we have held that parties may waive or renounce what law establishes in their favor, unless expressly or impliedly prohibited by law or public policy. We stated emphatically, however, that, "The law which provides that persons charged with

---

[12] In Green v. United States, 356 U.S. 165, 78 S.Ct. 632, the United States Supreme Court held that Criminal Contempt cases are not subject to jury trial as a matter of constitutional right. Cf. Loyola Law Review, 1961-62, p. 49.

capital offenses or those necessarily punishable by imprisonment at hard labor shall be tried by juries was made in the interest of both the accused parties and the state and neither is permitted to derogate from it. State v. Thompson, 104 La. 167, 28 So. 882; State v. Jackson, 106 La. 189, 30 So. 309." Cf. Patton v. United States, 281 U.S. 276, 50 S.Ct. 253, 74 L.Ed. 854.

In State v. Livaudais, 161 La. 882, 109 So. 536, we stated:

> "The responsibility resting upon the trial judge, and the latitude of discretion invested in him, in a prosecution for libel is exceptionally great. The penalty is either fine or imprisonment, or both, at the discretion of the judge. Rev. Stat., Sec. 804. In such case, the fine may be as great as $1,000, or as small as the judge deems fit; and the term of imprisonment may be as long as two years, or as short as the judge deems fit. Rev. Stat. Sec. 982. The imprisonment being without hard labor, the case must be tried by the judge, without a jury. Const. art. 7, Sec. 41, p. 50. The defendants in such case have no right of appeal, unless the judge sees fit to impose a fine exceeding $300, or imprisonment for a term exceeding six months, and even then, there is no appeal fom the judge's findings of fact on the question of guilt or innocence. Const. art. 7, Sec. 10, par. 7."

In Betts v. Brady, 316 U.S. 455, 62 S.Ct. 1252, 86 L.Ed. 1595, Betts was indicted for *robbery*. He was unable to employ counsel, and he was refused his request for such after informing the trial judge of his indigent position. Without waiving his asserted right to counsel, he pleaded not guilty and elected to be tried without a jury. The judge found [fol. 202] him guilty and imposed a sentence of eight years. Betts applied for Habeas Corpus while serving his penitentiary term; the writ was granted, but relief was denied by the State court. The United States Supreme Court granted Certiorari and affirmed the lower court, stating:

> "The Sixth Amendment of the national Constitution applies only to trials in federal courts. The due process clause of the Fourteenth Amendment does not incorporate, as such, the specific guarantees found in the

Sixth Amendment although a denial by a state of rights or privileges specifically embodied in that and others of the first eight amendments may, in certain circumstances, or in connection with other elements, operate, in a given case, to deprive a litigant of due process of law in violation of the Fourteenth. * * *"

In Gideon v. Wainwright, supra, Gideon was charged in a Florida State court with having broken and entered a poolroom with intent to commit a misdemeanor. *This offense is a felony under Florida law.* Gideon was unable to employ counsel, and his request for such was denied by the court. He conducted his own defense and was found guilty by a jury; he was thereafter sentenced to serve five years in the penitentiary. The United States Supreme Court granted Certiorari to review a decision of the Florida Supreme Court on hearing of a Writ of Habeas Corpus to the effect that refusal to appoint counsel for Gideon did not deprive him of his constitutional rights. Betts v. Brady, supra, was reviewed; with respect to its holding in that case, the United States Supreme Court stated:

"We accept Betts v. Brady's assumption, based as it was on our prior cases, that a provision of the Bill of Rights which is 'fundamental and essential to a fair trial' is made obligatory upon the States by the Fourteenth Amendment. We think the Court in Betts was wrong, however, in concluding that the Sixth Amendment's guarantee of counsel is not one of these fundamental rights. Ten years before Betts v. Brady, this Court, after full consideration of all the historical data examined in Betts, had unequivocally declared that 'the [fol. 203] right to the aid of counsel is of this fundamental character.' Powell v. Alabama, 287 U.S. 45, 68, 53 S.Ct. 55, 63, 77 L.Ed. 158 (1932). * * *

* * * * * * *

"The Court in Betts v. Brady departed from the sound wisdom upon which the Court's holding in Powell v. Alabama rested. Florida, supported by two other States, has asked that Betts v. Brady be left intact. Twenty-two States, as friends of the Court, argue that Betts was 'an anachronism when handed down' and that it should be overruled. We agree."

Since the present defendant was only charged with a *misdemeanor,* and the defendants in the Betts and Gideon Cases were charged with a *felony,* we do not think that the cases are apposite. As stated supra, Article VII, Section 41, of the Louisiana Constitution of 1921, provides that a defendant in a *felony case shall be tried by a jury.* In State v. Porter, supra, we held that trial by jury cannot be waived in certain instances.

We do not think that a comparison can be made between a request for counsel in a felony case and a request for trial by jury in a misdemeanor case. In one instance, there is an indigent defendant who cannot afford to have his defense properly presented asking for counsel to be appointed by the court to represent him; in the other, the defendant objects to trial of a misdemeanor by a skilled trier of facts and law (his responsibility is set out in State v. Livaudais, supra) and asks for trial by jury. We conclude that Gideon v. Wainwright, supra, is not controlling of the instant prosecution; here the defendant neither suffered prejudice nor deprivation of due process of law under the Fourteenth Amendment.

We conclude that the provisions of Article VII, Section 41, of the Louisiana Constitution of 1921, authorizing trial by the judge alone in misdemeanor cases, are constitutional. We find no prohibition against such provisions in the Con-[fol. 204] stitution of the United States or in the decisions of the United States Supreme Court.

Bill of Exceptions No. 4 is without merit.

Bill of Exceptions No. 5 is neither a part of the record nor argued in the State's or defendant's brief. We conclude that it has been abandoned.

Bill of Exceptions No. 7 is not a part of the record; it is not included in the State's brief, and it is only mentioned by number in the defendant's brief. We conclude that it has been abandoned.

Bills of Exceptions Nos. 6, 8, 9, and 11 will be included under one heading because of their similarity of content.

Bill of Exceptions No. 6 was reserved when the trial court permitted the State to ask Arthur Roane (a news-

paper reporter for the Times-Picayune, a New Orleans paper, who had previously testified that he was present in the District Attorney's office on the morning of November 2, 1962, and that the defendant had made a statement to him), "Did you make a report of this statement to your paper?" The objection of counsel for the defendant was to the effect that the Bill of Information charges defamation resulting from the publication in the New Orleans States-Item, and that the defendant was not charged with defamation as a result of publication in the Times-Picayune. He contended, "That statement is irrelevant and immaterial that he reported to the Times-Picayune."

The ruling of the trial court with respect to Bill of Exceptions No. 6 recites:

> "* * * The Court rules that solely for the purpose of showing *malice*, this evidence will be admissible and is restricted to the question of showing *malice*. There [fols. 205-206] has been raised in the preliminary motion filed herein the question of a qualified privilege by the Defendant and if the Court finds that it was in fact a question of law, that there is a qualified privilege, then the burden of proof would shift to the Plaintiff—to the State—to show malice—actual malice, regardless of the truth or falsity of the statement. So for that reason, the evidence is admitted solely for the purpose of showing *malice*. Now, you may answer the question and you may reserve your bill." (Emphasis ours.)

Bill of Exceptions No. 8 was reserved when the trial judge permitted the following testimony of Arthur Roane:

> "Q. Did he make a statement to you on November 9?
>
> "A. I suppose he did. He makes statements to me very often.
>
> "Q. Did he make a statement to you that he threatened to take racketeering influences of the Judges to the Grand Jury?
>
> * * * * * * *
>
> "Q. What was Mr. Garrison's statement to you?

"A. You are referring to this particular question there?

"Q. The article that you just refreshed your memory on.

[Discussion.]

"Q. Did Mr. Garrison make that statement to you?

"A. Yes. I don't know if it was on the particular date preceding this paper but he has said that to me."

In overruling the objection of counsel for the defendant to the above testimony, the trial judge stated, "The statement is admitted for the purpose of showing malice and Courts have held that statements made even after the time are admissible if they are connected with it."

Bill of Exceptions No. 9 was reserved when the trial judge permitted Jack Kneece, a General Assignment Re-[fol. 207] porter for the Times-Picayune, to testify with respect to his coverage of a meeting of the Press Association in the International Trade Mart Building on Saturday night, January 12, 1963. His testimony is to the effect that the defendant spoke for fifteen to twenty minutes at the meeting, and that part of the speech was directed to the question of racketeering influences on the judges involved.

In admitting the testimony of Kneece, the trial judge stated that he refused to strike the evidence from the record for the reason that "it was found to be introduced under the general ruling that the statement he made with reference to this case was admissible only for the purpose of showing malice, and the evidence is restricted to that and to that alone."

Bill of Exceptions No. 11 was reserved when Robert Kelso, a newspaper reporter for the States-Item, was permitted to testify according to his recollection with respect to parts of a talk given by the defendant on January 11, 1963, at the Monteleone Hotel. Kelso's testimony was with respect to statements made by the defendant with regard to the eight judges herein involved and was admitted for the purpose of showing malice.

In this Court defendant argues that:

"The trial judge erred in admitting these other statements of the accused in evidence at this trial on the theory that they were admissible under Article 445-446 of the Code of Criminal Procedure, R.S. 445-446 to show malice on the part of the accused, which the State would have to prove should the court hold that the November 2 statement was privileged. * * * These other statements of the accused involved in these bills were also comments upon the conduct of the Judges in respect to public affairs, made by the accused in the reasonable belief of their truth, and hence they also were privileged, and malice could not be inferred from these privileged statements any more than it could be inferred from the November 2 statement. The State [fol. 208] had the burden in this proceeding of establishing malice on the part of the accused toward the Judges by positive evidence tending to show that the accused felt hatred and ill will toward the Judges and wanted to hurt them, and that this hatred, ill will and desire to injure on his part was the motivating cause of this November 2 statement. See Clark and Marshall, Crimes, p. 76, Sec. 48 (1952); *State v. Lambert*, 188 La. 968, 178 So. 508. The State completely failed to offer any evidence of this type; instead, the State's witnesses testified that the accused showed and expressed no hostility toward the Judges, but was actuated by the belief that a public wrong had been committed and that it was his duty to inform the public of this fact. * * * The basis of the trial judge's holding that Garrison acted from malice in this matter is that these other statements of the accused reveal malice on his part. * * * Thus, prevented by the statutes and jurisprudence of this state from inferring malice from the November 2 statement, he inferred it from the other privileged statements!

"The trial judge erred in admitting these other statements in evidence, and he doubly erred in using them to impute malice to Garrison. If malice cannot be inferred from one privileged publication, how can it be

inferred from three other equally privileged publications?"

In answer to the Application for a Bill of Particulars the State said that it would contend that the statement of the defendant set forth in the Bill of Information constitutes malice in law and also malice in fact.

"Under the express terms of the statute, malice is an ingredient of the crime of libel. Without malice there can be no criminal responsibility. The general rule is, that legal malice, which in law means a wrongful act done intentionally, without just or lawful excuse, is sufficient to support a charge that the publication is libelous. And malice is presumed by the publication. But the rule has its limitations in cases of privileged communications. State v. Bienvenu, 36 La. Ann. 378. Where the comunication is privileged, malice is not presumed by law. Berot v. Porte, 144 La. 805, 81 So. 323, 3 A.L.R. 1651. In such communications the privilege can only be destroyed by actual malice, legal malice is not sufficient for the purpose.

• • • • • • • •

"If the privilege is only qualified the onus lies on the plaintiff in a civil suit or on the State in a criminal [fol. 209] prosecution of proving actual malice. This may be done either by extrinsic evidence of personal ill feeling or by intrinsic evidence, such as the exaggerated language, the mode and extent of the publication, and other matters in excess of the privilege. Odgers on Libel and Slander, 2d Ed., p. 438.". State v. Lambert, 188 La. 968, 178 So. 508.

"There is much confusion with respect to the use and meaning of the term 'malice' in the law of defamation. In one sense it denotes merely the absence of lawful excuse or privileged occasion; in another it denotes ill will, evil motive, intention to injure, or wanton disregard of the rights of others." 53 C.J.S. Libel and Slander, Sec. 2, p. 35.

"In its popular sense, the term 'malice' means hatred, ill will or hostility to another, but this is not neces-

sarily its meaning in law. In its broadest legal sense, it means the state of mind of a person, irrespective of his motive, whenever he consciously violates the law. Under this concept every person who is sui juris, and who, without justification or excuse, wilfully does an act which is prohibited and made punishable by law as a crime, acts maliciously. * * *

* * * * * * *

"*Express and Implied Malice.*—Malice is divided into express and implied malice. Express malice * * * is actual malice, or malice in fact, and exists when a person actually contemplates the injury or wrong which he inflicts,—as when a man shoots at another with the intent to kill him.

"Implied malice * * * otherwise called constructive malice, or malice in law, is where the law implies or imputes malice because of the nature of the act done, and irrespective of the actual intent of the party. * * * *" Clark and Marshall, Crimes, Sec. 5.05, p. 248.

"Various facts may be considered in determining the existence of malice. Evidence of ill feeling, unfriendly relations, and trouble between accused and the victim of an offense, and evidence concerning the conduct and sayings of the accused shortly before and after the offense was committed, are admissible for such purpose. * * * " Wharton's Criminal Evidence, Sec. 165, p. 320.

[fol. 210] As stated in the above quotations, "malice" is many things. Herein, the defendant pleaded a qualified privilege, and the State, as plaintiff, assumed the burden of proving malice. In offering the present testimony to which objection was raised, the State was not concerned with prior or subsequent defamations; it was merely trying to show by similar statements the malice it had previously alleged with respect to the Bill of Information. In his Per Curiam to Bill of Exceptions No. 8, the trial judge pertinently stated:

"In an attempt to prove malice it is impossible to probe the heart or mind of the defendant to ascertain

> whether or not there was malice, hatred, ill will or enmity or a wanton desire to injure, but the best proof of that state of mind is what he says and does with reference thereto, both before and after the defamatory statement is published if it be in connection with the defamation charged."

We agree with the trial judge that intent is involved in malice. In order to show intent, evidence is admissible of similar acts, independent of the act charged as a crime in the Information, for though intent is a question of fact, it need not be proven as a fact, it may be inferred from the circumstances of the transaction. LSA-R.S. 15:445.

> " • • • 'Other words than those laid in the petition, and spoken at other times, but within one year before the inception of the suit, may be given in evidence, for the purpose of showing malice in the defendant.'" Kendrick v. Kemp, 6 Mart. (N.S.) 500.

Under Relevancy, in Jones on Evidence, Civil and Criminal, Fifth Edition, Vol. 1, Sec. 159, p. 285, it is well stated:

> "The generally recognized rule is that 'When there is a question whether a person said or did something, the fact that he said or did something of the same sort on a different occasion may be proved, if it shows the existence on the occasion in question of any intention, knowledge, good or bad faith, malice or other state of mind, or of any state of body or bodily feeling, the existence of which is in issue or is deemed [fol. 211] to be relevant to the issue; but such acts or words may not be proved merely in order to show that the person so acting or speaking was likely on the occasion in question to act in a similar manner.'" See, 53 C.J.S. Libel and Slander, Sec. 214(b), p. 323.

Because the trial judge, the State, and the defense were concerned with malice in the instant prosecution, we find that the trial judge properly admitted the testimony, supra, to which counsel for the defendant objected and made the basis of these bills.

Bills of Exceptions Nos. 6, 8, 9, and 11, are without merit.

Bills of Exceptions Nos. 12, 13, and 14 are not a part of the record, and they are not argued in the State's brief nor in the defendant's brief. We conclude that they have been abandoned.

Bills of Exceptions Nos. 10, 15, 16, and 17 will be discussed jointly; the matters therein involved are similar.

Bill of Exceptions No. 10 was reserved when Malcolm V. O'Hara, Judge, Section "A," Criminal District Court, was asked the following question, "As a result of the statement made by Mr. Garrison that I referred to, have you been affected in any way?" and he responded, "Well, I am going to have to answer that this way: Naturally, being in public office and having held public office for a number of years, I know a number of people, and the impression that I get from the people who discuss this matter with me—it is done in the following ways: People jokingly ask me if it is true that we get all these vacations, whether or not I am a sacred cow, or whether I am influenced by racketeers. It is no one person or nothing specific; it is a cumulative sort of a thing done in a joking sort of manner, but the one thing—my one impression out of the thing, if this is admissible—is that the bench, the criminal bench, seems to be getting the worst of pub- [fol. 212] lic opinion, that the bench has suffered to some extent as a result of it, but nobody has hit me or threatened me or anything like that."

Objection to the above testimony was predicated on the grounds that it was based on impression and on hearsay. In admitting this testimony the trial court stated that it was "allowing the evidence to stand solely for the purpose of showing whether there was any reaction of the public, without the details of the reaction, if there was any reaction of the public to the public article such as it would bring it within the intendment and the definition of *defamation* as set forth in the Revised Statutes, Title 14, Section 47, and restricting it to that. * * *"

Bill of Exceptions No. 15 was reserved when Shirley G. Wimberly, Judge, Section "G," Criminal District Court, was permitted to give the following testimony:

"Q. Judge, the statement that Mr. Garrison made, has it subjected you to ridicule?

"A. Yes, it has.

"Q. Would you tell the Court how?

"A. Well, I have received many telephone calls of derision."

The objection to the foregoing testimony was based on the ground that it was strictly hearsay. The ruling of the trial court was as follows:

"The Court rules that the testimony is admissible, that there has been a public reaction by reason of the alleged defamatory statement. There would be no other way of showing that the publication alleged to be defamatory and exposed the person claimed to be defamed to hatred, contempt or ridicule or to deprive him of the benefit of public confidence or social intercourse, as provided in the Revised Statutes, Title 14, Section 47, dealing with defamation and the subsequent articles on the same subject. The Court rules at this time that what was said to the witness would be hearsay evidence but the fact that a statement was made to him would not be hearsay evidence if [fol. 213] the statement itself is not in evidence, but there is no way to show otherwise that he has been subjected to this injury or to defamation, other than the fact that there was a communication to him showing the public pulse or the public reaction to the statement that was made. * * *"

Bill of Exceptions No. 16 was reserved when Oliver Paul Schulingkamp, Judge, Section "F", Criminal District Court, was permitted to answer the following question, which he answered affirmatively:

"Since the publication of this statement by Mr. Garrison about the Judges, have you been subjected to ridicule, embarrassment and so forth as the result of the publication of said article?"

The objection to this question was based on the grounds that it would be purely speculation for the witness to state

facts in answer to the question, and that his response would be purely his impression and thus hearsay.

The trial judge's ruling with respect to Bill of Exceptions No. 16 was similar to that given to Bills of Exceptions Nos. 10 and 15.

Bill of Exceptions No. 17 was reserved when Thomas M. Brahney, Jr., Judge, Division "D", Criminal District Court, was permitted to testify as to whether he had been subjected to hatred, contempt, and ridicule as a result of the publication of November 2, 1962.

The objection to the question was based on the ground that the witness would not be in a position to know, except in his own opinion, whether anything that occurred to him after the alleged statement of Mr. Garrison was actually due to the statement. It was contended that the testimony would be irrelevant, immaterial, and not pertinent to the case. The trial judge gave the following ruling with respect to the objection:

> [fol. 214] "The Court is of the opinion that the evidence is admissible because there is no other way to show that he has been subjected to any hatred, contempt and ridicule and deprived him of the confidence or social intercourse, as stated in the statutory language, as stated in Revised Statutes Title 14, Section 47, within the intendment of that statute. He would be the only one who might or might not know. If he said that he knows that he has been subjected, I think he has a right to testify to that fact as to whether or not he has."

In this Court defendant contends that the trial judge's rulings, supra, which he incorporated in his per curiams to the instant bills, were a violation of LSA-R.S. 15:434 which provides that hearsay evidence is inadmissible, except as otherwise provided in the Code of Criminal Procedure.

We agree with the reasoning of the trial judge to the effect that when a person has been defamed, he has been exposed to hatred, contempt or ridicule (LSA-R.S. 14:47), and that the person's testimony with respect to such ex-

posure is proof of an essential ingredient of the crime charged—Defamation—and is not hearsay.

We conclude that the testimony of each of the four judges was not hearsay; it was given to prove an ingredient of the offense herein charged and alleged. The trial judge has correctly stated the law in his rulings, and we find no abuse of his discretion.

Bills of Exceptions Nos. 10, 15, 16, and 17, are without merit.

Bill of Exceptions No. 18 was reserved when Joseph I. Giarrusso, Superintendent of the New Orleans Police Department, a witness called on behalf of the State, was permitted to answer the following question:

> "Q. Has the District Attorney called upon you for any more help with reference to the vice investigations?
> "A. No, sir, he has not."

The ground of objection was that the question was misleading and involved matters not herein concerned.

[fol. 215] We do not find that the question was misleading. The following statement of the trial judge reflects his reason for admitting the testimony and shows that he committed no abuse of discretion:

> "At this time, the Court will state that it appears that one of the triggering causes of the giving of the statement on November 2, 1962 by Mr. Garrison to the press, on which this charge of defamation was made, was that this arose by reason of a dispute as to the investigations to be made and the right for the investigation to be paid for by the District Attorney. Throughout the record there have been, without objection, discussions of whether or not the last paragraph—I believe it is the last paragraph of Title 15, Section 571.11—as to the disposition of fines and forfeitures, concerning the disposition to be made and the right to the use thereof by the District Attorney of Orleans Parish. That has gone on throughout the trial of this case.

"There has been injected into this case, without objection, the question as to whether or not that paragraph of that particular act, which is an amendatory act, is unconstitutional, is violative of the constitutional provisions with reference to the Charter of the City of New Orleans, in which it was the contention of the Judges, and so testified to by them without objection, that they considered it unconstitutional for the reason that the police powers of the City of New Orleans were vested solely in the Police Department under the Home Rule Charter and under the constitutional provisions with reference to the Charter of the City of New Orleans. Therefore, the Court considers that it is very vital to a correct consideration of this as to whether or not this Defendant might or might not have called upon the City of New Orleans for additional help in addition to the police which were assigned to him, and I believe that there is no dispute that at least 12 policemen of his own choosing were assigned to his office at his request. That is not disputed. Therefore, the Court is of the opinion that it is perfectly permissible to show whether or not the District Attorney at any time called upon the Police Department of the City of New Orleans for additional help. * * *"

Bill of Exceptions No. 18 is without merit.

Bill of Exceptions No. 19 is neither made a part of the record nor argued in brief. We consider that it has been abandoned.

[fol. 216] Bill of Exceptions No. 20 was reserved when the trial judge rejected Proposition of Law No. Eleven. Counsel for the defendant presented the charge to the court before argument in the same fashion as a charge would have been presented had the case been tried by a jury; it recited:

"Publications made in the discharge of a public duty under authority of law are privileged. Burdick, Law of Crime, v. 3, p. 166, sec. 795; see *Deshotel* v. *Thistlethwaite*, 240 La. 12, 121 So. 2d 222."

In this Court counsel for the defendant states:

> "Defense counsel objected to the rejection of Proposition of Law No. 11 for the reason that the testimony of all of the complaining witnesses shows that Mr. Garrison's actions in this case arose directly out of his duties as District Attorney for the Parish of Orleans; that this is factually supported by all of the testimony in the entire record; that he was discharging a public duty when this controversy arose; and further that he has the duty, as a matter of law, to inform the public on the conduct of his office, and if he is thwarted in the operation and conduct of his office, then he has the duty to inform the public why he is being thwarted. * * *"

Section 795 of the Law of Crime, William L. Burdick, p. 165, recites:

> "There are some exceptions to the general common law rule that written and published defamation is criminally libelous even if it is true, since certain occasions are privileged on the ground of public interest and policy. Privileged occasions are either absolute or qualified. They are absolute when the law protects them with absolute immunity from any prosecution, either civil or criminal, although the publication may be knowingly false and with express malice. Absolute privilege is limited, however, to proceedings in which the public service and the administration of justice require absolute freedom of expression, regardless of truth, such as legislative and judicial proceedings, matters involving military affairs, and publications made in the discharge of public duty under authority of law, or made to the heads of departments of the state. The law regards these occasions as absolutely privileged since they are of such public importance that the utmost freedom of expression, spoken [fol. 217] or written, is deemed necessary for those whose duty it is to take part in them, regardless of the possible incidental defamation of any individual."

In Deshotel v. Thistlethwaite, supra, Deshotel, an attorney, brought suit against Thistlethwaite, Editor and Publisher of the Daily World Newspaper, for damages allegedly resulting from defamatory remarks made by Thistlethwaite in a television appearance. Thistlethwaite's defense of truth was found to have no merit. This Court then considered his alternative defense of fair comment and criticism alleged to be enjoyed as a qualified privilege; it held:

> "The law relied on here by appellant is incorrectly stated, and the cases cited are for the most part inapposite, as statements made relative to the actions of a candidate for public office are not, under Louisiana law, qualifiedly privileged even though false. * * *
>
> * * * * * * * *
>
> "The cases relied on by counsel for Thistlethwaite in connection with his argument that even false statements about public officials are privileged * * * are easily distinguishable. They deal with the conditional privilege which shields the statements of one who has a special duty to speak. See Prosser, Law of Torts (2d ed. 1955) pp. 614-617. *To be actionable such statements must have been made maliciously,* with knowledge of their falsity. * * * And although it can be argued that appellant's position in the case at bar derives some support from language appearing in our decision in Flanagan v. Nicholson Publishing Company, 137 La. 588, 68 So. 964, L.R.S. 1917E, 510, this court has pointed out in subsequent decisions that the Nicholson case is only authority for the proposition that Louisiana recognizes the doctrine of qualified privilege respecting fair comment and criticism of public officers and men in public life, but that 'the privilege does not extend to the publication of false statements of fact concerning public officers.' Martin v. Markley, 202 La. 291, 11 So. 2d 593, 594; Kennedy v. Item Co., 213 La. 347, 34 So. 2d 886." (Emphasis ours.)

In rejecting the Proposition of Law, supra, the trial court found that it had no application to the facts of this

[fol. 218] case and was not a full and correct statement of the law; in its per curiam it stated:

> "* * * It was further rejected for the reason that it would require an extended qualification, explanation and limitation if it were applicable. Further, the statement was incomplete, and under these circumstances the court was not required to charge this: LSA-R.S. 15:390,[13] and cases thereunder.
>
> "Further, it was rejected as not a complete and correct statement of the complete ruling in the case of Deshotel v. Thistlethwaite, cited."

After reading the Deshotel case, supra, we agree with the finding of the trial judge herein that the Proposition of Law does not contain the complete and correct holding of the case.

It is to be noted that the defendant relied on privilege, and the State contended that the expression of the defendant constituted malice in law and also malice in fact. Malice is presumed where a non-privileged publication or expression is false (LSA-R.S. 14:48); where a qualified privilege exists, malice must be proved (LSA-R.S. 14:49). With respect to the statement from Burdick, supra, the trial judge correctly found:

> "This was a Proposition of law taken out of context of the author and was subject to qualification, explanation and limitation in a consideration of the whole of the article. In the discharge of a public duty under authority of law, or a public officer in informing the public of the conduct of his office, it should be that the publication would be true in the discharge of a public duty, asserting legitimate reasons, rather

[13] "The prosecution and the defense have each the right to present to the court, before the argument has begun, any written charge or charges, and request that the same be given. Except as otherwise provided herein, the judge must give every such requested charge that is wholly correct and wholly pertinent, unless the matter contained in such charge have been already given, or unless such charge require qualification, limitation or explanation." LSA-R.S. 15:390.

than a false defamatory statement imputing wrongdoing to another public officer without any facts to justify it. * * * " See, State v. Turner, 228 La. 202, 81 So. 2d 861.

The trial judge made the following factual finding:

[fol. 219] "I did not find that the statement made by the defendant was a publication made in the discharge of a public duty altogether, but was a defamatory statement of fact maliciously made, and not a comment alone upon admitted facts; but he went beyond that and made statements of fact which were false.

"Further, I did not find that this charge was *wholly correct* and *wholly pertinent* to the facts in this case. Also, I found that it would require an even more extended qualification, explanation and limitation if it were applicable."

Under his factual finding, the trial judge was correct in rejecting Proposition of Law No. Eleven.

Bill of Exceptions No. 20 is without merit.

Bills of Exceptions Nos. 21, 22, and 23 will be jointly discussed.

Bill of Exceptions No. 21 was reserved when the trial court qualified Proposition of Law No. Thirteen, which had been submitted to it prior to argument; it recites:

"Article 1, Section 3, of the Louisiana Constitution and the First Amendment to the United States Constitution require that persons be given the opportunity to inform the community of both sides of an issue of public interest. The purpose of these constitutional guarantees is to protect parties in the free publication of matters of public concern, to secure their right to a free discussion of public events and public measures, and to enable every citizen at any time to bring the government and any person in authority to the bar of public opinion by any just criticism upon their conduct in the exercise of the authority which the people have

conferred upon them. Cooley's 2 Constitutional Limitations (8th ed. 1927) 885; *Wood* v. *Georgia*, 370 U.S. 375."

The trial court qualified Proposition of Law No. Thirteen by pointing out that Article I, Section 3, of the Louisiana Constitution of 1921, was not a part of the holding in the case of Wood v. Georgia, supra. This section provides that a person is responsible for the abuse of liberty of speech or of the press.

[fol. 220] In this Court defendant ayers in brief:

> "The accused, through his counsel, excepted on the ground that *Wood* v. *Georgia* dealt with freedom of speech, and it is immaterial whether freedom of speech is challenged through the medium of contempt proceedings or criminal defamation proceedings—if freedom of speech protects an individual, it protects him against all challenges. * * *"

Bill of Exceptions No. 22 was reserved when the trial court rejected Proposition of Law No. Fourteen, which recites:

> "The role that elected officials play in our society makes it imperative that they be allowed freely to express themselves on matters of current public importance. The First Amendment to the United States Constitution affords an absolute privilege to an elected official who expresses himself on such matters. *Wood* v. *Georgia*, 370 U.S. 375."

The trial judge rejected the Proposition, because he "did not find that the Constitution of the United States or the Constitution of the State of Louisiana grants an *absolute* privilege to make *any* statement, particularly a false defamatory or derogatory statement, simply because a person is an elected official, in commenting on matters of public importance, and in so doing, make unsubstantiated and false statements of fact regarding other persons, rather than commenting upon admitted facts, and the party defamed would have no legal remedy."

In this Court defendant avers:

> "Defense counsel excepted to this rejection, pointing out that Article 1, Section 3, of the Louisiana Constitution cannot bar the accused's rights under the First Amendment to the United States Constitution, and further that the record in this case disclosed that Mr. Garrison was an elected official with a duty to the people of the Parish of Orleans, and that thus Proposition of Law No. 14 is pertinent in this case. • • •"

Bill of Exceptions No. 23 was reserved when the trial court rejected Proposition of Law No. Sixteen, which recites:

> [fol. 221] "Men are entitled to speak as they please on matters vital to them; errors in judgment or unsubstantiated opinions may be exposed, but not through punishment for the expression. Under our system of government, counter-argument and education are the weapons available to expose these matters, not abridgment of the right of free speech. Wood v. Georgia, 370 U.S. 375."

After differentiating the instant prosecution from Wood v. Georgia, supra, the trial court found:

> "It goes without saying that principles of law are applied to the facts in the case, and I did not find this *wholly correct* or wholly pertinent to the facts in this case; particularly that it was a partial statement taken out of context on an entirely different factual situation."

Defendant avers in this Court:

> "Through counsel, the accused objected, stating that if the cloak of freedom of speech is present, it protects the accused in this case from all challenges to that freedom, including charges of criminal defamation, and that the rights guaranteed to the accused by the United States Constitution cannot be abridged by the law, jurisprudence, or Constitution of the State of Louisiana. • • •"

We find no merit in Bills of Exceptions Nos. 21, 22, and 23. Our reasons for such finding are set forth in our lengthy discussion of Bill of Exceptions No. 3, which in part pertained to similar matters. The trial judge was correct in his rulings; his reasoning in distinguishing Wood v. Georgia, supra, from the instant prosecution in his per curiams to the instant bills is very similar to that of this Court in Bill of Exceptions No. 3. He did not abuse his discretion nor commit error with respect to the provisions of LSA-R.S. 15:390, supra.

Bills of Exceptions Nos. 21, 22, and 23, are without merit.

Bill of Exceptions No. 24 was reserved when the trial court qualified Proposition of Law No. Seventeen, which recited:

> "Actual malice cannot be inferred from any qualifiedly privileged statement. It must be proven by [fol. 222] extrinsic evidence of hatred, ill will or the wanton desire to injure on the part of the accused."

The trial judge qualified the Proposition by the following statement from State v. Lambert, 188 La. 968, 178 So. 508:

> "If the privilege is only qualified the onus lies on the plaintiff in a civil suit or on the State in a criminal prosecution of proving actual malice. This may be done either by extrinsic evidence of personal ill feeling or by intrinsic evidence, such as the exaggerated language, the mode and extent of the publication, and other matters in excess of the privilege. Odgers on Libel and Slander, 2d Ed., p. 438."

In his per curiam to the instant bill, the trial judge sets forth, as follows, his further reasons for qualifying the Proposition:

> "My reason for qualifying it was that my impression was that it sought *to restrict the proof of actual malice to extrinsic evidence only, of hatred, ill will or wanton desire to injure on the part of the accused.*
>
> "Actual malice is susceptible to other definitions also and could be proven by extrinsic evidence under those

definitions, and the State is not restricted in proving actual malice by any other legal means.

"It was also qualified by the provisions of LSA-R.S. 14:49, which provides that the State must prove actual malice, whether the statement is true or false, under the provisions of said article.

"Counsel for defendant * * * made the statement as to how he appreciated the ruling in that the effect was that the State must prove malice in cases only involving qualified privilege. I do not see how this appreciation was arrived at as I was discussing nothing more than the law of actual malice and a qualifiedly privileged statement as requested by counsel.

"Counsel has in this bill of exception set up an additional explanation after ruling, stating his reasons therefor the proof of malice in all cases. This question could not be raised after the requested charge was given because there was no request made of the court for a charge as to the law on a non-qualifiedly privileged statement or legal malice. Therefore, counsel has set up in this bill of exception the question of legal [fol. 223] malice where there is no qualified privileged statement, which was not requested of the court in the charge; and, of course, this additional reason asserted after the court has ruled on the proposition of law submitted does not make it a proposition of law or a charge that should have been passed upon and should form no part of the bill of exception. It is a recognized principle of law that a judge is presumed to know the law and does not have to charge himself on any question of law not requested in a misdemeanor case tried by the judge alone.

"The requested charge was *granted* but was qualified for the reason that it was not a complete statement of the law of proof of actual malice and was not a *wholly* correct statement of the law as applied to the facts in this case."

In the present bill of exceptions, counsel for the defendant avers that he objected to the ruling of the trial judge for the reason "that the State must prove malice in all cases

of criminal defamation, whether a qualified privilege exists or not; that in cases of qualified privilege the State must prove actual malice; in cases where the qualified privilege does not exist, the State must prove legal malice. The State must carry the burden of proof of malice in all cases of criminal defamation."

In this Court, counsel for the defendant sets forth in brief:

> "The basis of the defense's exception here is that the State must prove malice in all cases of criminal defamation, not just in cases involving a qualified privilege. * * * In cases of qualified privilege the State must prove actual malice; in cases where the qualified privilege does not exist, the State must prove legal malice. The State must carry the burden of proof of malice in all defamation cases, not just in those defamation cases in which the defendant has a privilege.
>
> "The above, and the trial judge's per curiam to this bill, * * * are good examples of the confusion which existed in the trial judge's mind about what the State had to do in this case to prove malice. As we have already stressed in this brief, the State introduced no evidence to show hatred, ill will or a wanton desire to injure the Judges on the part of the accused. What the State did introduce in evidence at the trial, over the objection of defense counsel, were several other [fol. 224] privileged statements of the accused, also made, like the November 2 statement, in a reasonable belief of their truth and without malice. As he tells us in his Reasons for Judgment in this matter, the trial judge bases his holding of malice on Garrison's part on these other *privileged* statements. According to the trial judge, these other privileged statements 'show the state of mind that the Defendant had on and from the date of the original defamation up to and including the date the last one was issued and convince me that it was a steadfast position of ill will and enmity arising out of a dislike of the fact that the Judges refused to sign certain motions for him.'"

As stated throughout this opinion, the defendant pleaded "qualified privilege," and the State contended that the statement of the defendant constituted malice in law and malice in fact. LSA-R.S. 14:49 provides that actual malice must be proved where a qualified privilege exists under certain enumerated circumstances; the statute does not restrict the proof of malice to extrinsic evidence. We find no prohibition in the law or in the jurisprudence which forbids the use of intrinsic evidence in a prosecution such as the instant one; neither do we find a limitation or restriction. The trial judge was therefore correct in qualifying Proposition of Law No. Seventeen. (See our discussion of Bills of Exceptions Nos. 6, 8, 9 and 11, supra.) Cf., Miller, Smith and Champagne v. Capital City Press, 142 So. 2d 462; Jenkins v. D X Sunray Oil Co., 297 F. 2d 244.

The trial judge was correct in stating that after he had given his ruling to Proposition of Law No. Seventeen, he could not be compelled to expand to matters not requested in the Proposition—the proof required in *all* cases of defamation.

Bill of Exceptions No. 24 is without merit.

Bill of Exceptions No. 25 was reserved to the ruling of the trial judge in denying defendant's Motion for a New Trial.

[fol. 225]. The Motion reurges all of the objections previously raised in Bills of Exceptions Nos. 1 through 24, and with respect to these matters nothing new is presented for our consideration. We have answered the arguments in discussing the bills, all of which we have found to be without merit.

The Motion avers that there is no evidence in the record to support the judgment of the trial court. We have read the transcript of testimony (consisting of 741 pages), as well as the numerous pleadings hereinbefore discussed; we have also read the defendant's brief (94 pages) and the State's brief (43 pages), and we find that there is evidence to support the judgment. Where there is some evidence to sustain the conviction, this Court cannot pass upon the

sufficiency thereof. State v. Copling, 242 La. 199, 135 So.2d 271; State v. McDonell, 208 La. 602, 23 So.2d 230. We are constrained to remark here that the length of this opinion is due to the extensiveness of the pleadings and the voluminous record attached; we are also impelled to state that the learned trial judge and able counsel for both the State and the defendant have treated the matter with dexterity and completeness.

Counsel for the defendant argues in brief that there is not one scintilla of evidence to indicate that the accused made the statement herein involved without a reasonable belief of its truth. This contention would have to do with malice, which we have covered in our discussion of Bills of Exceptions Nos. 6, 8, 9, 11 and 24.[14] Cf. State v. Bienvenu, 36 La. Ann. 378.

[fol. 226] Bill of Exceptions No. 25 is without merit.

Bill of Exceptions No. 26 was reserved when the trial court denied defendant's Motion in Arrest of Judgment.

The Motion averred "that the entire proceedings against the defendant are null and void for the reasons that the statutes under which the bill of information is laid is unconstitutional and null and void and in violation of the

---

[14] It is appropriate to here observe that if defendant believed the statements he made, he could have pursued the following legal channels open to him:

(1) Legal proceedings to compel the judges to sign the orders.

(2) Charging the judges with a violation of the "Deadhead" statute, LSA-R.S. 14:138.

(3) Conducting an open hearing under the provisions of LSA-R.S. 15:17.1 concerning the alleged actions of the judges and whether or not there was a question of racketeer influences on the eight judges.

(4) Institution of removal from office proceedings under the provisions of Art. IX, Secs. 1 and 5, La. Const. of 1921.

(5) Availing himself of the services of the Judicial Council of the Supreme Court of Louisiana as provided by its Rule XX, Sec. 6. West's LSA, Vol. 8, Supplement for use during 1963.

The record reflects that defendant did not avail himself of the foregoing legal channels.

First Amendment of the United States Constitution as a restriction on the freedom of speech."

We find no merit in the instant bill. In our disposition of Bill of Exceptions No. 3, we found LSA-R.S. 14:47-50 constitutional and not violative of the First Amendment to the United States Constitution.

Bill of Exceptions No. 26 is without merit.

For the reasons assigned, the conviction and sentence are affirmed.

Hamiter, J., concurs in the result.

[fol. 227] [File endorsement omitted]

IN SUPREME COURT OF LOUISIANA

[Title omitted]

APPLICATION FOR REHEARING—
Filed June 17, 1963

The judgment of this Honorable Court rendered herein on June 4, 1963 is erroneous, and a rehearing should be granted in this case for the following reasons:

1.

This Honorable Court erred in holding that Bill of Exception No. 1, involving the Motion to Recuse Judge Ponder, is without merit. The basis of the accused's Motion to recuse is that: (1) the Honorable Jack P. F. Gremillion, Attorney General of Louisiana and prosecutor in the instant case, publicly stated in the press and elsewhere before the trial of this defamation charge that "This is an unprecedented matter (referring to the instant case). . . . There is no doubt that the integrity of our judicial system is involved." —thereby making the integrity of the Louisiana judiciary an issue in Garrison's trial, with the result that the Louisiana judiciary became an interested party in this case within the meaning of the recusation law of Louisiana, Article 303 of the Code of Crimi-

nal Procedure, R.S. 15:303; and (2) the constitutional and statutory provisions of the State of Louisiana authorizing the arbitrary appointment by the Louisiana Supreme Court of a trier of fact for a particular case are unconstitutional as violative of the Due Process Clause of the [fol. 228] Fourteenth Amendment to the United States Constitution, and the appointment of the Honorable William H. Ponder under these constitutional and statutory provisions is therefore null and void. For argument in support of this bill see pp. 17-29 of our brief.

The opinion of this Honorable Court makes no mention of the highly prejudicial remarks of the Attorney General which we relied upon in our brief in this case as the factual basis of this bill. This Court has set aside convictions because during the trial the prosecuting attorney has made an appeal to race prejudice or has commented on the failure of the accused to testify in his own behalf—remarks which have unduly prejudiced the trier of fact in the case against the accused. See *State* v. *Easley*, 118 La. 690, 43 So. 279. In the present matter the Attorney General announced during his closing argument before Judge Ponder that he had come into the case because he thought that "the integrity of the judiciary was involved". The trier of fact in the instant proceedings was himself a member of that judiciary; can it be doubted for one moment that the Attorney General's attitude toward this case influenced Judge Ponder in his decision herein finding the accused guilty? The opinion of this Honorable Court also makes no mention of our constitutional argument, on pages 18-19 of our brief in this case, that bias or prejudice on the part of the judge in a *misdemeanor* case in Louisiana is grounds for recusation. See *State* v. *Laborde*, 214 La. 644, 38 So. 2d 371. In the instant case Judge Ponder in effect admitted in his per curiam to this [fol. 229] bill that he was biased or prejudiced toward Garrison; he admitted this by saying that these emotional attitudes furnished no grounds for his recusation under the Louisiana jurisprudence. As Professor Slovenko points out in his article "Je Recuse!": The Disqualification of a Judge, 19 La. L. Rev. 644 (1959), and as this Court recognized in *State* v. *Laborde*, supra, if bias or prejudice

on the part of the Judge in a *misdemeanor* case is not grounds for recusation under Article 303 of the Code of Criminal Procedure, then that article violates Article 1, Section 9, of the Louisiana Constitution, which guarantees the accused a trial by an impartial jury.

As this Court said in *State* v. *Livaudais*, 161 La. 882, 109 So. 536, relied on in the opinion in the instant case (page 29):

> "The responsibility resting upon the trial judge, and the latitude of discretion vested in him, in a prosecution for libel is *exceptionally great.*" (Emphasis ours.)

By his attitude toward Garrison's prosecution as expressed in his public statements before the trial, and during the trial itself, the Attorney General made it impossible for any Louisiana judge to give the accused a fair trial for defamation because of his November 2 statement.

Nor did the opinion of this Honorable Court in the present matter make any reference to, or in any way distinguish, the federal cases cited on pages 24-26 of our brief in support of the argument that the Due Process Clause of the Fourteenth Amendment to the United States Constitution requires that the trier of fact to determine the guilt or innocence of an accused in a criminal proceeding [fol. 230] be completely without interest.

And finally, in its discussion of Bill No. 1 this Court had nothing to say in answer to our contention on pages 27-29 of our brief that the accused herein was prejudiced because his trier of fact was selected by this Honorable Court.

In finding Bill No. 1 herein to be without merit this Court has violated rights guaranteed to the accused by Article 1, Section 9, of the Louisiana Constitution and by the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

2.

This Honorable Court also erred in finding that our Bill of Exception No. 2 was without merit. Not only did the trial judge permit the State to refuse to specify the par-

ticular parts of the November 2 statement which were thought to be defamatory; he also allowed in evidence three other privileged statements made by the accused on this same subject, and then went on to conclude that all four statements revealed malice on the part of the accused. By assuming this attitude during the trial of this case the trial judge placed an unfair burden on the accused herein, and prevented him from receiving a fair trial.

3.

The opinion in this case is in error in holding that the accused's rights under the First Amendment to the United States Constitution have not been violated by this prosecution. The First Amendment argument made by the accused herein is grounded on the following contentions:

[fol. 231] 1. *The criminal statutes defining defamation under which the charge against Garrison has been brought, Articles 47-50 of the Louisiana Criminal Code, R.S. 14:47-50, as well as that portion of Article 1, Section 3, of the Louisiana Constitution authorizing such laws, are absolutely null and void in that they are prohibited by the First Amendment to the United States Constitution, guaranteed to citizens of the states by the Due Process Clause of the Fourteenth Amendment to that Constitution.*

A. Any law which in any fashion curtails freedom of expression violates the First Amendment to the Federal Constitution.

B. In the alternative, these statutes are phrased in such broad, general terms that they cover activity that in ordinary circumstances constitutes an exercise of freedom of speech or of the press, and for this reason Articles 47-50 are void.

C. Articles 47-50 fail to provide the procedural safeguard of a trial by jury which is essential to the protection of First Amendment rights.

2. *In the alternative it is contended that in the event Articles 47-50 defining the crime of defamation, R.S.*

14:47-50, are found not to violate the Federal Constitution, still the accused's conviction of defamation for the statements set out in the bill of information filed herein deprives him of his right to freedom of expression, guaranteed to citizens of Louisiana by the Due Process Clause of the Fourteenth Amendment and the First Amendment to the United States Constitution.

For argument in support of the above points, see pages 34-55 of our brief in this case.

[fol. 232] The opinion of this Honorable Court in this case simply does not even begin to answer any of the serious arguments which we made in urging the accused's First Amendment rights in the instant case, as will be obvious if pages 34 through 55 of our brief are compared with pages 19 through 25 of the opinion rendered herein on June 4, 1963. Much of the constitutional law applicable is quoted *verbatim* and several of the leading United States Supreme Court decisions are briefed at some length, but *not one* of our arguments on this issue is given any serious consideration.

In our brief in this matter we distinguished *Beauharnais* v. *Illinois*, 343 U.S. 250, 72 S.Ct. 725, 96 L.Ed. 1375, and showed that it is not relevant in the instant case. See Brief, p. 51. This Court's opinion does not attempt to refute our reasoning about *Beauharnais*. On the contrary, this Honorable Court's opinion contents itself, as did the trial judge, with simply stating that under *Beauharnais* criminal libel is not within the protection of the First Amendment, and that it is unnecessary in the instant case to consider the issues behind the phrase "Clear and Present Danger". *Bridges* v. *California*, *Pennekamp* v. *Florida*, *Craig* v. *Harney*, and *Wood* v. *Georgia*, under which the accused herein is clearly entitled to a reversal of his conviction, are dismissed on the ground that contempt and defamation are different crimes!* And *not one word* is said in the opinion about *seditious libel* and its historical and constitu-

* For the close similarity between the crimes of contempt and defamation see Kelly, Criminal Libel and Free Speech, 6 Kan. L. Rev. 295, 322 (1958).

[fol. 233] tional background in England and this country—which is an amazing oversight in view of the fact that the offense with which Garrison is charged herein is seditious libel, and in view of the further fact that we devoted pages 34 through 39 and pages 75 through 83 of our brief in this case to a discussion of the crime of seditious libel.

In addition to the numerous authorities dealing with the First Amendment cited and relied on in our brief in this case, we would like to add the following:

In *Bridges* v. *California*, 314 U.S. 252, 62 S.Ct. 190, 86 L.Ed. 192, it was argued that at the time the Constitution of the United States was adopted, the English common law recognized the power of a judge to punish for contempt, and that hence contempt was not protected by the First Amendment. The United States Supreme Court brushed aside this argument, saying:

> "That this historical contention is dubious has been persuasively argued elsewhere. . . . In any event it need not detain us, for to assume that English common law in this field became ours is to deny the generally accepted historical belief that 'one of the objects of the Revolution was to get rid of the English common law on liberty of speech and of the press.' Schofield, Freedom of the Press in the United States, 9 Publications Amer. Sociol. Soc. 67, 76."

One of the Framers of the United States Constitution, James Madison, wrote that "the state of the press . . . under the common law, cannot . . . be the standard of its freedom in the United States." VI Writings of James Madison 1790-1802, 387. And in protesting against the federal Sedition Act Madison said:

> "The freedom of the press, under the common law, is, in the defenses of the Sedition Act, made to consist in an exemption from all previous restraint on [fol. 234] printed publications, by persons authorized to inspect or prohibit them. It appears to the committee that this idea of freedom of the press can never be admitted to be the American idea of it; since a law inflicting penalties on printed publications would

have a similar effect with a law authorizing a previous restraint on them. It would seem a mockery to say that no laws should be passed preventing publications from being made, but that laws might be passed for punishing them in case they should be made." 4 Elliot, Debates on the Federal Constitution 569 (2d ed. 1866).

The reason there is no United States Supreme Court decision—to date—involving the constitutionality of a state criminal libel statute such as Articles 47-50 of the Louisiana Criminal Code is that prosecutions for criminal libel are practically unheard of in this country. To resort to prosecution rather than counter argument seemed ridiculous and cowardly on the frontier and throughout the United States during the nineteenth century. The individualist temper of Americans; the philosophy of *laissez faire;* the memories of the Star Chamber in the field of libel, of pre-Revolutionary abuse, and of the Sedition Act of 1798; faith in the rationality of discussion—all of these factors played a part in the almost complete disappearance in the United States of prosecutions for seditious libel —or criminal libel of any kind. See Kelly, Criminal Libel and Free Speech, 6 Kan. L. Rev. 295 (1958); Riesman, Democracy and Defamation, 42 Colum. L. Rev. 727, 734 (1942).

As an example of the foregoing, Justice Jackson of the United States Supreme Court testified before the Senate Committee which passed on his appointment to the Supreme Court that when he was Attorney General of the United States his department had an established policy of declin- [fol. 235] ing to prosecute criminal libel cases when there was open to the individual making the complaint a civil remedy, and when there had been no breach of the peace or other public injury done by the libel. Jackson told the Committee about his refusal to prosecute the columnists Pearson and Allen at the request of Senator Tydings. Pearson and Allen said that Tydings had gotten the WPA to build a road to the yacht basin on his Maryland estate, but although the F.B.I. found this charge to be inaccurate Attorney General Jackson refused to prosecute. See Riesman, op. cit. supra, p. 748.

The opinion of this Honorable Court also fails completely to discuss, or even to mention, our argument that the procedural safeguard of a trial by jury is an essential ingredient in a criminal statute which deprives a person of a First Amendment right. As the great jurist Sir Henry Maine reminds us in his work Early Law and Custom at page 389 (1883), liberty is secreted "in the interstices of procedure". On the importance of procedural safeguards in the area of First Amendment rights, see McKay, The Preference for Freedom, 34 N.Y.U.L. Rev. 1182 (1959), particularly II F. *Procedural Due Process and the First Amendment*, p. 1218. See also *Speiser* v. *Randall*, 357 U.S. 513, 78 S.Ct. 1332, 2 L.Ed.2d 1460; Meiklejohn, The First Amendment is an Absolute, 1961 Sup. Ct. Rev. 245; Reich, Mr. Justice Black and the Living Constitution, 76 Harv. L. Rev. 673 (1963); Frantz, The First Amendment in the Balance, 71 Yale L.J. 1424 (1962).

Thomas I. Emerson, Lines Professor of Law at the Yale Law School, effectively demonstrates the unconstitutionality of a criminal libel statute such as we have in Louisiana in the April, 1963, issue of the Yale Law Journal. See [fol. 236] Toward a General Theory of the First Amendment, 72 Yale L.J. 877, esp. 922-924 (1963).

There can be no doubt that the accused's conviction in the present matter violates the First Amendment to the United States Constitution, guaranteed to him by the Fourteenth Amendment to that Constitution.

4.

This Court erred in holding that the accused was not entitled to a jury trial in the district court proceeding herein. The accused's request for a jury trial has the following bases:

1. The right to a trial by jury is essential to a fair trial.

2. Trial by jury is particularly important in cases involving the right of free speech.

For argument on these points see pp. 72-83 of our brief filed in this case.

This Court erred in holding that *Gideon* v. *Wainwright*, 372 U.S. 335, 83 S.Ct. 792, is not applicable in the instant case because a felony was involved in *Gideon* and only a misdemeanor is involved here. Nothing in the United States Supreme Court decision in *Gideon* even suggests that its holding is to be limited to felony cases. On the contrary, the decision in *Gideon* obviously includes all criminal trials. The Court also is in error in deciding that there is no comparison between the right to counsel and the right to a trial by jury—if anything, the right to trial by jury is *more important* than the right to counsel. Trial by jury is a right which dates back to Magna Carta in 1215, whereas [fol. 237] the right to be assisted by counsel is of much more recent vintage. A jury is protection against a prejudiced judge; counsel is not.

As we have already said in this Application for Rehearing, the opinion of this Honorable Court does not even try to answer our argument that a jury is a constitutional essential in a trial involving a First Amendment right. In footnote 12 of the opinion attention is called to *Green* v. *United States*, 356 U.S. 165, 78 S.Ct. 632, 2 L.Ed.2d 672, in which it was held that criminal contempt cases are not subject to jury trial as a matter of constitutional right. The reason given by the United States Supreme Court for its decision in *Green* is that there was no trial by jury in contempt cases at the time the Constitution was written. The contrary is true in seditious libel cases, as we pointed out in the brief which we filed in this case. Furthermore, we call the Court's attention to the fact that the United States Supreme Court has recently taken jurisdiction in the contempt case of Mississippi Governor Barnett and Lieutenant Governor Johnson, in which the sole issue for decision is whether these two gentlemen are entitled to a trial by jury for their contempt of a federal court of appeal's restraining order. *U.S.* v. *Barnett*, no. 1011, 31 L.W. 3340.

In being denied a trial by jury in the present proceedings the accused was deprived of rights guaranteed to him by the First, Sixth, and Fourteenth Amendments to the United States Constitution.

5.

The opinion in the instant case errs in holding that it was proper for the trial judge to admit in evidence state-
[fol. 238] ments made by the accused on November 9, 1962, and on January 11 and 12, 1963, to show malice on the part of the accused under Articles 445-446 of the Code of Criminal Procedure, R.S. 15:445-446. As we said in our brief in this case, pages 83-85, these other statements of the accused were also comments upon the conduct of the Judges in respect to public affairs, made by the accused in the reasonable belief of their truth, and therefore they also were privileged, and malice could not be inferred from these privileged statements any more than it could be inferred from the November 2 statement. The opinion in this case, on pages 35 through 37, sets out the State's Answer to the Application for a Bill of Particulars, an excerpt from the per curiam of the trial judge, and a quotation from *Kendrick* v. *Kemp*, 6 Mart. (N.S.) 500 and from Jones on Evidence. However, nothing is said in answer to our contention that the State failed in this proceeding to establish malice on the part of the accused toward the Judges by positive evidence tending to show that the accused felt hatred and ill will toward the Judges and wanted to hurt them, and that this hatred, ill will and desire to injure on his part was the motivating cause of this November 2 statement.

As we said in our brief in this case, if malice cannot be inferred from one privileged publication, how can it be inferred from three other equally privileged publications?

6.

The opinion of this Honorable Court errs in holding that the State could rely solely on the self-serving, hearsay testimony of the eight Judges in this case to show that Garrison's November 2 statement exposed these Judges [fol. 239] to hatred, contempt, or ridicule, or deprived them of the benefit of public confidence or social intercourse. See Art. 47 (1), Crim. Code, R.S. 14:47 (1).

In its opinion this Court answers our objections to this testimony by simply stating that the testimony was not

hearsay, giving neither reasons nor legal authority to support this holding. Certainly it was hearsay. Hearsay evidence is testimony a witness offers in court which is not based on his own knowledge, but is merely a repetition of what he has been told by a person not a witness in the case, and which is offered as proof of the truth of the matter he is repeating. Wharton's Criminal Evidence, v. I, pp. 571-577, sec. 249 (12th ed. 1955). Under this test, the testimony of the Judges repeating what had allegedly been said to them by various persons about their numerous vacations, and so forth, was clearly hearsay; nor does it come under one of the exceptions to the hearsay rule, such as res gestae; etc.

As we stated in our brief in this case, pages 85 through 89, the Judges' testimony on the subject of the hatred, contempt, or ridicule to which they had allegedly been subjected amounts to no evidence at all. It certainly would not have won them any damages in a civil suit for defamation!

Thus this accused has been fined $1,000 and deprived of his valuable First Amendment rights solely on the anonymous, self-serving, vague and indefinite hearsay testimony of the eight complaining witnesses. Not only was no "Clear and Present Danger" to the social order shown herein by the State, but also the State completely failed to prove that the Judges themselves had been injured in any fashion.

[fol. 240]

7.

The opinion of this Honorable Court errs in holding that the testimony of Joseph I. Giarrusso, Superintendent of the New Orleans Police Department, as to whether the accused had called upon him for more help in vice investigations, was admissible in evidence at the trial of this matter. As we argued in our brief in this case, on pages 89-90, Giarrusso's testimony had *nothing* to do with the two crucial issues in this case: *i.e.*, whether Garrison made his November 2 statement in 1) a reasonable belief of its truth, and 2) without malice. Further, the trial judge's reason for allowing Giarrusso's testimony to be given, as revealed in his per curiam to Bill No. 18, is such a striking example

of how confused he became about the issues in this case that it alone should entitle this accused to have his conviction set aside.

8.

The opinion of this Honorable Court in this case errs in upholding the trial judge's rejection of Proposition of Law No. Eleven, which recited that publications made in the discharge of a public duty under authority of law are privileged. See Burdick, Law of Crime, v. 3, p. 166, sec. 795; *Deshotel* v. *Thistlethwaite*, 240 La. 12, 121 So.2d 222.

The accused's two legal defenses to the instant prosecution were 1) his right to free speech under the First Amendment to the United States Constitution, and 2) the double privilege which he enjoyed on November 2, 1962—first, because the remarks were made about the public actions of public men, and second, because the speaker was an [fol. 241] elected public official and was speaking about the public business which he was chosen by the people to transact. Fifteen pages of our brief in this case are devoted to the defense of privilege, pages 55 to 70. In its opinion herein this Court disposed of the privilege claimed by the accused as a public official (see pages 43-46 of the opinion) on the ground that the trial judge found that the accused acted maliciously—but not a word is said by this Court in its opinion in refutation of our argument that the statement which forms the basis of this prosecution is privileged because it is a comment on the public actions of public men.

Nothing could be more striking proof of the extent to which Garrison was prejudiced in the present case by having a biased trier of fact than the way in which his legal defense of privilege was pulled right out from under him by the holding of the trial judge that the accused spoke maliciously on November 2, 1962, and thus had no privilege—a holding, as we pointed out in our brief in this case, which is not supported by one iota of evidence.

It is perfectly true that malice can be proven by the State in different ways in a defamation prosecution—by extrinsic evidence of hatred, ill-will and a desire to injure on the

part of the accused; or by intrinsic evidence within the publication itself, such as the exaggerated language, the mode and extent of the publication, and so forth. *State* v. *Lambert*, 188 La. 968, 178 So. 508. However, the State was able to put on no extrinsic evidence of personal ill-feeling against the Judges on Garrison's part at the trial of this case, nor did the trial judge hold that the language of the November 2, 1962 publication was exaggerated or that the statement itself, by its mode or extent, revealed malice on the part of the accused. And as the accused defended on the ground of privilege, malice cannot legally be *inferred* [fol. 241a] from the publication itself—but that is just what the trial judge did in this matter. See Art. 49, Code Cr. Proc., R.S. 14:49 (actual malice must be proved when the publication is privileged). Another error of law which has been made by the district court and by this Honorable Court in this case is that "reasonable belief" and "malice" in Article 49 have been merged and *lack of reasonable belief has been treated as malice*. This approach to the problem is indefensible.

In answer to our contention, made in brief and argument, that there is not one scintilla of evidence in this record to indicate that the accused made the statement here involved without a reasonable belief of its truth, this Honorable Court observes in footnote 14 in its opinion herein that if the accused believed the statements he made, he could have pursued the following legal channels open to him:

1. Taken legal proceedings to compel the judges to sign the orders.
2. Charged the judges with a violation of the "Deadhead" statute, R.S. 14:138.
3. Conducted an open hearing under the provisions of R.S. 15:17.1 concerning the alleged actions of the judges.
4. Instituted removal from office proceedings under the provisions of Article IX, Secs. 1 and 5, La. Const. 1921.
5. Availed himself of the services of the Judicial Council of the Supreme Court of Louisiana.

The answer to this line of reasoning is that:

1. There were no legal proceedings available to compel the judges to sign the orders approving expenditures from [fol. 242] the Fund. Mandamus will not lie in Louisiana to enforce a discretionary duty. *State* v. *Orleans Parish School Board*, 221 La. 243, 59 So.2d 177. However, the Honorable J. Bernard Cocke was prosecuted by the accused herein for malfeasance in office for refusing to sign an order relative to payment of investigation expenses out of the Fund, but the judge ad hoc appointed to try the case, the Honorable Lessley P. Gardiner, dismissed the prosecution because of the discretionary nature of the duty involved. See *State* v. *J. Bernard Cocke*, No. 178-590 "H" of the docket of the Criminal District Court for the Parish of Orleans.

2. Taking a great number of vacations, many of them allowed by law, is not the extreme type of behavior prohibited by the "Deadhead" statute, which forbids the receipt of compensation as a public officer when absolutely no work at all is done, or virtually none. See R.S. 14:138.

3. In November of 1962 the accused filed a petition for an open hearing under the provisions of R.S. 15:17.1, concerning various activities of the Judges, in Judge Brahney's court, Section "D" of the Criminal District Court for the Parish of Orleans. See Minute Book, Section "D", Month of November, 1962. No action was ever taken on this petition by the Judges.

4. The Judges' actions in arbitrarily and abruptly cutting off the District Attorney's funds raises interesting questions about the racketeer influences on our eight vacation-minded judges, but would hardly serve as the basis for a removal from office suit under Article IX, Sections 1 and 5, of the Louisiana Constitution. Section 1 sets out [fol. 243] the grounds for such a suit as "high crimes and misdemeanors in office, incompetency, corruption, favoritism, extortion, or oppression in office, or for gross misconduct, or habitual drunkenness."

5. The Judicial Council is concerned only with the smooth running of the Louisiana courts, civil and criminal. Its functions are organizational in nature. It has no jurisdiction over the actions of the judges themselves, particularly in the area of the Fines and Forfeitures Fund, and has absolutely no authority, disciplinary or otherwise, over any of the judges of this state. See Supreme Court Rules, Rule XX, Section 6, which sets out the purposes of the Judicial Council.

To adopt the reasoning used by this Honorable Court in its opinion herein, it is obvious that the accused had a reasonable belief in the truth of what he said on November 2, 1962 because he did in fact pursue all of the legal channels which were open to him.

Conclusion

For the great many reasons given above, the accused herein, Jim Garrison, respectfully requests that this Honorable Court grant a rehearing in this case and set aside the conviction and sentence herein.

Donald V. Organ, 800 Royal Street, New Orleans, Louisiana.

Louis P. Trent, 419 Carondelet Street, New Orleans, Louisiana.

Rehearing refused, June 28, 1963.

[fol. 244] Certificate of Service (omitted in printing).

[fol. 245]

IN SUPREME COURT OF LOUISIANA

[Title omitted]

PETITION FOR SUPERSEDEAS, STAY OF EXECUTION AND RECALL OF MANDATE

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the State of Louisiana:

I.

The petition of Jim Garrison, defendant in the above numbered and titled cause, with respect represents that:

II.

This Honorable Court rendered its decision affirming petitioner's conviction and sentence on June 4, 1963, and denied petitioner's application for rehearing on June 28, 1963.

III.

Petitioner contends, *inter alia*, that the opinion and decree of this Honorable Court deprives him of rights guaranteed to him by the First and Fourteenth Amendments to the United States Constitution.

IV.

By motion to quash and by motion in arrest of judgment in the district court petitioner challenged the constitutionality of Article VII, Section 41 of the Constitution of Louisiana, and Articles 47-50 of the Louisiana Criminal Code (R.S. 14:47-50), on the ground that these provisions are repugnant to the First and Fourteenth Amendments to the United States Constitution.

V.

In its decision in this case this Honorable Court held, [fol. 246] that said provisions are valid and constitutional.

VI.

Under the provisions of Title 28, Section 1257 of the United States Code, petitioner has a right of appeal to the Supreme Court of the United States, and this right exists for a period of ninety (90) days from 1963.

VII.

Petitioner intends to appeal this case to the Supreme Court of the United States within the time allowed by law

for so doing, and petitioner is entitled to an order staying and recalling the issuance of the mandate herein, and staying and arresting the execution of the judgment herein until petitioner has had time to prepare and present his appeal and to have it acted upon, and in the event that petitioner shall timely file his notice of appeal to the Supreme Court of the United States, staying and recalling the mandate herein and staying and arresting the execution of the judgment herein, until the Supreme Court of the United States shall have made its final disposition of this case.

Donald V. Organ, Chief Counsel for Jim Garrison,
800 Royal Street, New Orleans 16, Louisiana.

Eberhard P. Deutsch, Of Counsel.

[fol. 247] *Duly sworn to by Donald V. Organ, jurat and certificate of service omitted in printing.*

[fol. 248]

IN SUPREME COURT OF LOUISIANA

No. 46,686

STATE OF LOUISIANA

versus

JIM GARRISON

ORDER FOR SUPERSEDEAS, STAY OF EXECUTION AND RECALL OF MANDATE—June 28, 1963

On consideration of the petition of Jim Garrison, defendant and appellant in the above numbered and entitled cause:

It Is Ordered that the execution and mandate and enforcement of the judgment and decree rendered in the above entitled and numbered cause be, and it is hereby recalled, stayed and arrested pending and until the 26th

day of September, 1963, in order to permit Jim Garrison to appeal herein to the Supreme Court of the United States, and, in the event Jim Garrison shall timely file a notice of appeal to the Supreme Court of the United States, then it is ordered that the execution and mandate, and enforcement of the judgment and decree rendered in the above entitled and numbered cause be, and it is hereby, recalled, stayed and arrested until the Supreme Court of the United States shall have made its final disposition of this case, and until the disposition of this matter shall have become final.

New Orleans, Louisiana, this 28th day of June, 1963.

E. Howard McCaleb, Jr., Associate Justice, Supreme Court of the State of Louisiana.

[fol. 249] [File endorsement omitted]

IN SUPREME COURT OF LOUISIANA

[Title omitted]

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed July 11, 1963

1—Notice is hereby given that Jim Garrison, the appellant above named, hereby appeals to the Supreme Court of the United States from the final judgment of the Supreme Court of Louisiana (entered herein on June 28, 1963) affirming the judgment of conviction.

This appeal is taken pursuant to 28 USC 1257(2).

Appellant was convicted of the crime of defamation, in violation of Section 47, Title 14, Louisiana Revised Statutes; was sentenced to pay a fine of $1,000 or to serve four months' imprisonment; and is presently enlarged on bail in the sum of $500.

2—The clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said

transcript the following: The entire record and transcript of the proceedings in the District Court (excluding all exhibits) and in this Court (including this notice of appeal); and a copy of appellant's brief filed in this Court.

3—The following question is presented by this appeal:

> Whether the First and Fourteenth Amendments to the Constitution of the United States permit the State [fol. 250] of Louisiana so to apply its constitutional provision for trial of misdemeanors without a jury, and its statutory provision making criminal defamation a misdemeanor, as to convict and sentence a parish District Attorney, without trial by jury, for publication of a statement critical of the official conduct of the Judges of the parish Criminal Court, when the District Attorney's statement plainly involved no clear and present danger, either to preservation of the peace or to the proper administration of justice.

Donald V. Organ, 800 Royal Street, New Orleans.

Louis P. Trent, 419 Carondelet Street, New Orleans; Attorneys for Jim Garrison, Appellant.

Eberhard P. Deutsch, Of Counsel.

CERTIFICATE OF SERVICE (omitted in printing).

[fol. 252]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

No. 177-418

Section "C"

STATE OF LOUISIANA,

vs.

JIM GARRISON.

Transcript of Trial Proceedings—January 21, 22, 23, and 24, 1963

Pursuant to Notice, the above captioned cause came on for hearing in Division "C" Criminal District Court, beginning at 10:00 o'clock a.m. on Monday, January 21, 1963,

Before: Honorable William H. Ponder, Judge.

APPEARANCES

For the Plaintiff: Honorable Jack P. F. Gremillion, Attorney General, State of Louisiana. M. E. Culligan, Sr., Esq., John E. Jackson, Jr., Esq.

For the Defendant: Donald V. Organ, Esq., Louis P. Trent, Esq.

Margie Witt—Court Reporter.

[fol. 253] PRELIMINARY MATTERS

The Court: This is the case of the State of Louisiana vs. Jim Garrison. Is the State ready?

Mr. Gremillion: Yes, your Honor.

The Court: Is the Defendant ready?

Mr. Organ: The Defendant is ready.

The Court: I want to state at the outset that my rules of Court, which I have operated under for a long number

of years, are that there will be no smoking in the courtroom, no noise in the courtroom, there will be no pictures taken in the courtroom while Court is in session. There will be no tape recordings in the courtroom, no publicity of any kind, other than the usual press reports in the proceedings of this trial.

If there are any matters that you want to see me about in the coverage of the trial, I will be available in my office to give you any information that you want. I want to extend to Counsel a fair and impartial trial in this case. I want to extend to the members of the press and news media every courtesy that is justified under the Canons of Ethics.

I believe that the State and the Defendant have arranged for the taking of the testimony by special court reporters.

Mr. Gremillion: That's correct, your Honor, the firm of Dietrich and Witt. While we both understand that a tran- [fol. 254] script is not necessary in a misdemeanor case, we felt it was desirable to have one and we have made those arrangements and we would suggest that the court reporter be sworn.

(Thereupon, Margie Witt was duly sworn by the Court to serve as Court Reporter in these proceedings.)

Mr. Organ: If the Court please, the Defendant wants to sequester all witnesses now. We understand that the State has subpoenaed a great number of newsmen and TV representatives which we are not interested in sequestering but the balance of them we want sequestered.

The Court: Will you call the names of the witnesses and see if the witnesses are here, so I will be sure they are placed under the Order.

Mr. Gremillion: If your Honor please, we have principally newspaper reporters, the Judges themselves and several other witnesses that may or may not be used. As to all of those, we assume the responsibility of their presence. We have no objection to the rule for sequestration of witnesses; however, we would like in addition to that to have the Judges exempted and the Assistant District Attorneys that they have subpoenaed.

The Court: I wouldn't feel justified in excepting to the extent of leaving them come into the courtroom during the proceedings. I think perhaps they are interested parties.

[fol. 255] Mr. Gremillion: That's what I mean. We have no objection to the Judges not being in the courtroom because many of them are holding Court today.

The Court: Go ahead and call the witnesses.

(Thereupon, the names of the witnesses were called by the clerk.)

Mr. Organ: I'd like the record to show that the witnesses are not answering for themselves and these answers are being given by the attorneys for the prosecution.

Mr. Gremillion: We made a statement, your Honor, that we would be responsible for them. One of them is a clerk in one of the divisions of the Court.

Mr. Organ: We would just like to know who is actually here. We'd like the defense witnesses called, if the Court please.

(Thereupon, the witnesses were called by the clerk.)

Mr. Organ: If your Honor please, we don't expect to need these defense witnesses and after they are called, we'd like to have them excused, if they will give defense Counsel their telephone number where we can call them and have them available in a couple of hours.

The Court: That will be satisfactory.

Mr. Organ: If the Court please, I notice that out of our first nine witnesses, there was only one answer and I ask [fol. 256] the Court to ask the clerk to determine if those subpoenas were served, so we will know if these men have been served.

The Court: One of the witnesses was not served. I had a call from an attorney this morning and he made an explanation. He will be available to the Court and I can give you that name later. One witness was personally served and has not answered. I would issue a bench warrant for his arrest and bring him to Court, if you so desire.

Mr. Organ: I'd like to know who he is.

The Court: Alex Berger. You want him attached?

Mr. Organ: Not at the moment. We may not need him.

The Court: Michael Callia, they made several trips to his home and never were able to serve him and, in addition,

telephone calls and have not been able to locate him. Frank Caracci, I believe he is in Florida at this time. Sam Saia has not been served. He is out of town and won't be back until next week.

Mr. Organ: Does your Honor have anything on Francis Giardina, the No. 1 witness? We don't want to hold up the proceedings but if they will look and let us know as the trial progresses.

The Court: Those witnesses who are in the courtroom and whose names were called will please stand. All of the [fol. 257] witnesses that have been summoned and that are now standing will go out of the courtroom. I don't believe there is a witness room for the Court to sequester you or put you under the Rule during the trial of this case, so you will just have to make yourselves available outside of the courtroom or somewhere within the building where you can be available. You will not come into the courtroom at any time while this trial is in progress. You are not to discuss this case among yourselves or allow anyone to discuss it with you until after the conclusion of the trial.

Mr. Organ: Counsel can discuss the case with the witnesses?

The Court: Yes.

Mr. Organ: I'd like the witnesses to be so instructed.

The Court: Counsel will be permitted to talk to the witnesses but no other person.

Mr. Organ: If your Honor please, it has been called to my attention that the newspaper men apparently feel that they are separated too by your Honor's ruling. I don't think that was the intent.

The Court: You want to exclude the newspaper men from the room?

Mr. Gremillion: They can be excluded from sequestration and can attend all sessions of the Court—all news [fol. 258] media, including TV reporters also.

The Court: Will you announce that newspaper reporters or TV reporters or other news media, that they may be permitted in the Court. I want to explain to members of the press and other news media that there was no exception made as to our rule of sequestering witnesses until after

you had retired. Both sides in this case have consented that all newspaper reporters and other news media are exempt and are excepted from the rule that all witnesses be out of the courtroom.

I have no way of knowing when witnesses come in or do not come in. I hope that you gentlemen will instruct your witnesses that are not here that they will be placed under the Rule. Are you gentlemen ready to proceed?

Mr. Gremillion: Yes, your Honor. Call Mr. Bert Hyde.

Bert Hyde, called as a witness by the Plaintiff, after being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Gremillion:

Q. Give us your name, please.

A. Bert Hyde.

Q. Mr. Hyde, what is your occupation?

A. Reporter, New Orleans States-Item.

[fol. 259] Q. How long have you been a reporter?

A. About twenty, thirty years.

Q. Do you know the Defendant in this case, Mr. Jim Garrison?

A. Yes, I do.

Q. Would you point him out if he is in the courtroom?

A. This is Mr. Garrison here (indicating).

Q. How long have you known Mr. Garrison?

A. Oh, at least four or five years or longer.

Q. Did you have occasion to report an interview with Mr. Garrison in his office concerning the Criminal Court Judges on Friday, November 2, 1962?

A. Yes, sir.

Q. Would you tell the Court the circumstances of that interview and who was present?

A. I had been assigned by my City Editor to come out with a photographer to get the pictures and to identify the Judges who were attending an en banc session down at

Judge Platt's court. We got here, I think about nine o'clock. My City Editor also told us that if we got an opportunity, to go in and see Mr. Garrison and ask him if he had any statement to make regarding a statement which had appeared that morning in the Times-Picayune by Judge O'Hara, who had previously been a Judge.

[fol. 260] Q. Excuse me, were you sworn in?

A. Yes.

Q. Go ahead.

A. We got pictures and I watched and as soon as Mr. Garrison's office secretary came in, I told her that I would like to see the District Attorney when he got in and if she got a chance, to get me in. As we were taking pictures of the Judges going into Judge Platt's chambers, Mr. Garrison walked up the stairway—the front stairway with Mr. Geryais. When I saw him, I ran down and told him the first opportunity that he had, I wanted to come in and talk to him and see if he had a statement to make and also, that if he would just stand still a minute, I wanted to get my photographer to take his picture. So he waited and I got Ralph Uribe, who was the photographer with me and we went down and got Mr. Garrison's picture and he said just as soon as he was able, that he would see us. I came back and came into the courtroom where the Judges were meeting and I had also been instructed to assist Jack Dempsey, who was the regular reporter on the run. We waited until I think the Judges went into closed session and then when they opened up we went in and they were making a statement. I suggested then to Dempsey that he handle that phase of it—just go ahead and handle it all the way through—and I would go down and see Mr. Garrison. I went down [fol. 261] and we were there only just a few minutes when he did let us in.

Q. Who was present with him?

A. I forgot. I think Art Roane, Times-Picayune reporter, came behind me or about the same time and shortly after—he wasn't there at the beginning but Jack Dempsey came in. There was Mr. Garrison and I remember Pefshing Gervais, his special investigator, was there and a number of his assistants—men that I recognized to be his assistants

—they were there. They were not there during the entire time that he made his statement but they were in and out.

Q. Was Mr. Shea one of his assistants?

Mr. Organ: I am going to object to the leading question. Mr. Shea hasn't been brought into this testimony so far.

A. It would be a little difficult—

Mr. Organ: I urge my objection and ask for a ruling.

The Court: The objection is sustained. Don't lead your witness.

Q. Do you recall the names of any of the assistants there were in the room?

A. I think Mr. Dalton and Mr. Klein, I think. I didn't pay too much attention to it. I wasn't particularly interested.

Q. Where was this?

[fol. 262] A. This was in Garrison's office.

Q. Here in this building?

A. Criminal Courts Building, this floor, on the end.

Q. Did Mr. Garrison at that time give you a statement?

A. Yes. I told him that my office had sent me out and we were wondering if he would have some statement in answer to Judge O'Hara's statement. I think I told him that the Judges had just met and I had just come from there. I didn't know what they had actually done and he said, "Sit down and I will give you a statement."

Q. Did he proceed to give you a statement?

A. Yes, sir, he did.

Q. Did you report that statement?

A. I did, sir.

Q. In its entirety?

A. Yes, sir.

Q. And how did you report that statement?

A. Well, Mr. Garrison began making the statement and I was taking it in longhand and once or twice I told him that he should slow down a bit; that he was going too fast; that I wanted every word, and he did.

Q. And you reported every word that he said?

A. I took down every word. I specifically pointed out, I [fol. 263] think once to Mr. Garrison that I wanted to be sure that I had every word correct because I was afraid he

might write another letter on me and I kidded him a little at that time about the letter which he wrote to the editor of the paper following a coverage that I had made, I think of his original statement as District Attorney before the Chamber of—no, it was the Kiwanis Club or Rotary Club, one of them.

Q. Did he cooperate with you in that respect?

A. He definitely did.

Q. Did you check with him from time to time as he made that statement, asking whether he wanted you to say it or wanted you to report that?

Mr. Organ: I object, if your Honor please. That's grossly leading.

A. He said that he wanted to cooperate.

The Court: I think you have a right to show whether or not he checked from time to time. Ask him as to the statement. I don't think you are permitted to go into anything that he subsequently said.

Mr. Gremillion: All I am asking is exactly what your Honor said. In other words, did you check with him from time to time as to the accuracy of the statement?

Mr. Organ: I submit that is grossly leading, if the Court please.

The Court: I don't think it's leading.

[fol. 264] A. Well, on two or more occasions as we proceeded, we slowed him down and I think on at least two or three occasions I was writing faster than Mr. Roane and Mr. Roane asked him what was that statement, how did it end, and Mr. Garrison asked that I read it back and I read it back and Roane took the statement from the statement that I read.

Q. What did you do with that statement after you took it?

A. It was pretty close to twelve o'clock and I went down and called my office and told them that he had made a statement that was very lengthy and they put Mr. Kelso—Bob Kelso—on the phone and asked me to tell him briefly, as quickly as I could, for our home edition, which goes to bed about twelve o'clock—if I would give him something of

what he said and Kelso got on and I said he said so much that I would, rather than trying to give it to them over the telephone, that I would start putting it on the teletype machine in takes and they could take the story from that which I would have on the machine before twelve o'clock. I think I started about twenty minutes or fifteen minutes to twelve.

Q. Did you put the whole statement on the teletype to your paper?

A. I put it in its entirety, yes, sir.

Q. Did you check the statement that you sent with the one that was published in the paper?

[fol. 265] A. I checked the one that I put on the machine from my own notes. I tore it off the machine. It was quite a lengthy piece of paper because I would take a little bit and then leave a space so they could tear it off any time they wanted. I checked that back against my notes and I put the notes in my pocket. I kept the notes for several days in a desk drawer I had down at the office. To check what came out in the newspaper against it, no, I didn't.

Q. Did you check or did you keep the teletype that you sent from this courthouse to the paper?

A. It was downstairs in the press room. I didn't specifically set it aside, no. As a usual thing, we sent it and then the Times-Picayune or the States reporter later comes and it's folded up and put on the spike.

Q. Did you subsequently secure this teletype?

A. No, sir, I didn't.

Q. Have you checked the statement published in the States-Item on November 2, as compared to the one made by Mr. Garrison in his office, to make a comparison?

A. Other than I read it and I was sure of the accuracy, because I had taken it word by word off of my notes and put it on the machine. I didn't check it against my copy, no, sir.

Q. Are you satisfied that the statement published in the States-Item is the same made to you by Mr. Garrison here?

[fol. 266] Mr. Organ: I object to this, if the Court please. That calls for an opinion of the witness. The witness has already testified as to what he did. Whether he is satisfied or not is not relevant to the issues in this case.

The Court: It is not a matter of opinion, Mr. Organ. It's a matter of many statements—what transpired and what didn't transpire.

Mr. Organ: He is asking, if your Honor please, whether he is satisfied or not. Whether he is satisfied is not a fact as to the issue in this case.

The Court: Rephrase the question, Mr. Gremillion.

Q. Is the copy of the article published in the States-Item a report of Mr. Garrison told you in his office?

A. Yes, sir.

Q. I show you, Mr. Hyde, the paper of November 2, article on the left-hand side, which states, "Text of Garrison Stand on the Judges." Is that the article that you wrote?

A. Yes, sir.

Mr. Gremillion: In connection with the witness' testimony, I would like to mark this as "State Exhibit No. 1" and, if your Honor please, would the Court permit us to just cut this out and keep the record from being too bulky?

The Court: I will suggest that in cutting it out you show [fol. 267] the date and the name of the paper.

Thereupon, the article presented was marked "State, Exhibit No. 1" for identification and filed in evidence.

Q. Now, Mr. Hyde, have you see Mr. Garrison since that article was published in the paper?

A. Yes, sir.

Q. Did he ever complain to you that it was inaccurate?

A. No, sir.

Mr. Gremillion: We tender the witness.

Cross examination.

By Mr. Organ:

Q. Mr. Hyde, in the first portion of this statement or this article that you wrote in the States, which has been introduced in evidence, appears these words which are not in quotes, and I will quote the portion which prefaces this statement: "The statement by District Attorney Jim Garrison on his feud with the Criminal District Judges fol-

lows:" Mr. Garrison did not give you the word "feud," did he?

A. No, sir.

Q. In other words, that's what you put in?

A. No, sir, I didn't put that. I put the statement on the paper—the statement that appeared in quotes. I put [fol. 268] that on the machine. Any words that precedes it or the heading is done by the office in the editing of it.

Q. In other words, the word "feud" was used by someone in the States-Item office, is that correct?

A. That's correct.

Q. Now, you don't know what assistants were in Mr. Garrison's office at any particular time that the statement was being made?

A. I didn't actually—I didn't pay too much of attention because many times when you go to see someone in his office, there will be someone coming in and out. I honestly couldn't pick them out to say who was there. They were coming in and going out and I was having a pretty good job of my own keeping up with what he was saying and trying to get it down. I was taking it in longhand and I was watching my notes and my paper.

Q. It is absolutely fair to state, is it not, that Mr. Garrison sought you out to give you this statement?

A. No, sir, he didn't.

Q. You sought him out?

A. Yes, sir.

Q. And you sought him out on instructions from your superior?

A. I did.

Q. And you sought him out on instructions from your [fol. 268a] superiors and they told you to find out what the District Attorney had to say with respect to a previous statement which Judge William O'Hara, retired, had made?

A. That's right.

Q. To ask him if he had a statement?

A. Any time a statement appears by one person, having reference to the other, we try to get contact with that person and have the answer come out in the same edition and sometimes we don't because of the way the editions fall.

Q. You actually asked him to give you a reply to Judge William O'Hara's statement?

A. Yes, sir.

Q. And you sought him out in his office where he conducts his official duties?

A. I did, yes, sir.

Q. Now, have you interviewed Mr. Garrison frequently?

A. Yes, sir.

Q. Does he frequently have a prepared text or handwritten text?

A. I don't remember him ever having had one—maybe one time but usually it's just off the cuff, as it were.

Q. In other words, your testimony is he doesn't normally have a prepared text when he makes a press release?

A. He has never given me one, no, sir.

[fol. 269] Q. He has never given you a prepared text?

A. I won't say never. I said that I think I might have gotten one press release from him that may have been a handout, as we call them—one that had previously been prepared. I don't usually cover or haven't covered Mr. Garrison's office that much. As I say, Mr. Dempsey is out here as the regular reporter and that day that I was out here, I was here to assist him because the office knew that he was going to be well tied up with this en banc session of the Court and in the police room.

Q. Did he have a prepared text in front of him?

A. No, sir, he didn't.

Q. Did he have prepared notes in front of him from which he read?

A. No, sir. He was doodling on a piece of paper and he was looking at something but it wasn't a statement, no, sir. There wasn't—I don't think there was anything much on his desk; he keeps a very orderly desk. I didn't see anything.

Q. Now, at the time, what was Mr. Garrison's demeanor? Was he in a state of anger or coolness or calmness?

A. No, sir, he appeared to be very calm to me.

Q. At any time during the course of your taking that statement, did he highlight any particular portion of it?

[fol. 270] A. No, sir, I wouldn't say that he highlighted any of it, no, sir.

Q. Isn't it a fact that Mr. Garrison made no special attempt whatever to see that the statement was published, as far as you have any knowledge?

A. No, sir, not as far as my knowledge, nothing.

Q. He didn't ask you later on, "Well, did you give my statement to the paper?" or anything like that?

A. No, sir.

Q. And he didn't at any time say to you, "Make sure you get this printed in the States," did he?

A. No, sir.

Q. Did he say anything at that time which indicated that he was in any way trying to cause any harm to any of the Judges of the Criminal District Court?

A. No, sir, he didn't say anything that he was trying to harm anybody.

Q. How frequently do you cover the Criminal Courts Building at Tulane and Broad Street?

A. I was regularly assigned here some years ago and now when I come out it's usually some special occasion. Perhaps when the regular man on the run gets tied up with too many things—you see, this particular run covers all the courts, the District Attorney's office, the Police [fol. 271] Department, the Fire Department, the Criminal Sheriff's office—it's quite a run and when there is anything really breaking, as we supposed that it would be that morning because of the en banc session of the Judges, they had sent me out early to assist Jack.

Q. How long ago was it that you regularly covered this beat?

A. From '45 or '46 through '49, about five years I would say, permanently assigned as police reporter.

Q. You have not covered it regularly since that time?

A. Yes, when I first came back here in '56—I left the paper for a few years—when I came back in 1956, at that time Mr. Dempsey was coming in at five o'clock in the morning and he would go home at twelve o'clock and I would come at twelve o'clock and stay until two-thirty, my ordinary hours being later than his.

Q. During the course of that period of time, did you have occasion to go in and out of the various courtrooms to see what trials were in progress?

A. Yes, sir.

Q. Did you cover the Judges, so to speak?

A. Yes, sir.

Q. Did you ever have occasion to cover specifically Section "E"?

[fol. 272] A. Yes, sir.

Q. Who was presiding Judge?

A. Bernard J. Cocke.

Q. Is he still presiding Judge in that section?

A. Yes, sir.

Q. Now, do you recall any time covering any proceeding—an open court proceeding in Section "E" on a Friday?

Mr. Gremillion: I object to this. This is going far beyond the scope of the witness' direct testimony and it's irrelevant and immaterial.

Mr. Organ: This witness has been placed on the stand by the prosecution. He can be examined on the entire case and not just on the direct examination.

The Court: I think he is correct on that.

A. To specifically say that I covered one in his courtroom on a Friday would be like saying that I had covered one on Monday or a Wednesday. I think I would be unfair in saying that because days actually meant nothing. You covered them when the trial was breaking and don't cover every trial. You cover those which the newspaper feels it wants broader coverage on. I couldn't honestly say.

Q. You don't recall?

A. No, sir.

Q. Do you recall who the presiding Judge was in Section [fol. 273] "B" at that time?

A. Judge O'Hara.

Q. Isn't it Judge Platt?

A. Yes, I think it is, I'm sorry.

Q. The one next to the elevators?

A. Yes.

Q. Can you tell us whether you recall covering any trials in Section "B" under the presiding authority of Judge George Platt?

A. Not too many, sir. I think, to be very honest, I think I have covered trials in his court, yes, sir, in which he presided.

Q. Do you specifically remember any?

A. No, I don't. I have covered trials on which he was sitting on the Bench.

Q. Now, around 1956, I believe you said you were covering this regularly out here. How long did that period last, approximately?

A. At least three years.

Q. Three years?

A. Yes, sir.

Q. Did you come out here every day?

A. Every day but I was more particularly interested in covering the police end of the run, rather than the trials, because if there was a trial going on, sometimes they would [fol. 274] call me in from Jefferson and I would be assigned completely to the trial or Mr. Dempsey would be covering the trial and I would be replacing him downstairs in the press room to watch the police room.

Q. Would you be in a position to state whether or not it's very frequent for court in any given section to be terminated by noon and there is no further proceeding for the entire afternoon?

A. I don't think I exactly understood that.

Q. Well, wasn't it quite frequent that you would come into a courtroom from Monday through Friday after twelve o'clock or after one o'clock or in the afternoon and find no proceedings whatever; that all business had been terminated before noon?

A. That has happened lots of times, yes, sir.

Q. Many times?

A. Many times, yes, sir.

Mr. Organ: I have no further questions.

Redirect examination.

By Mr. Gremillion:

Q. Mr. Hyde, did you tell Mr. Garrison that you had come there to take a statement from him concerning this matter?

A. No, sir. I told Mr. Garrison that my office had sent me out and perhaps he had an answer to Judge O'Hara's [fol. 275] statement.

Q. Did he voluntarily give you this statement?

A. Yes, sir.

Q. Did he at any time tell you that this was off the record or that he didn't want to be quoted?

A. No, sir.

Q. Was his statement to you deliberate and free?

A. Yes, sir.

Mr. Organ: If the Court please, I am going to object and move that the answer be stricken because it was made while I was trying to object.

The Court: I think you went into the question of whether Mr. Garrison was calm and whether or not Mr. Garrison had said he wanted it to be published or didn't want it to be published.

Mr. Organ: The point I want to make is that the question is grossly misleading—whether it was deliberate or free is a question of this man's opinion. He didn't ask him whether he was calm. He asked him whether it was deliberate and free.

Mr. Gremillion: I just asked him if he gave that report deliberate and free, that's all.

The Court: He has already testified to that.

Mr. Organ: I move his answer be stricken, if the Court please.

[fol. 276] The Court: The objection came too late. The question was asked and answered without objection and I sustain from the time the objection was made.

Mr. Organ: To which ruling of the Court, the Defendant respectfully reserves a bill of exception and asks to be included in this bill of exception the question, the objection, the ruling of the Court, the answer, the reasons for the ob-

jection, the bill of information, all of the testimony and the entire record.

The Court: To which bill of exception the Court makes this statement at this time for the purposes of the record: That the questions that were asked and the answers that were given prior to the time that the objection was made have become a part of the record without objection. The Court has sustained any statements made after the objection has been made. It will be more fully covered in the per curiam of the Court. I suggest that you start numbering your bills of exception because the Court will have no way of knowing. I believe you have four on preliminary motions and perhaps you should make this Bill of Exception No. 5. The Court puts in this statement that this line of questioning arose by reason of the fact that Counsel for the Defendant went into the question of how the statement was made and the State has a right to examine him at this time for the purpose of clarifying the conditions at that [fol. 277] time more fully than raised by Counsel for the Defendant.

Mr. Gremillion: We have no further questions, if the Court please.

(Witness excused.)

DONALD WHARTON COLEMAN, called as a witness by the Plaintiff, after being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Gremillion:

Q. Would you state your name, please, sir?
A. My name is Donald Wharton Coleman.
Q. Where do you live, Mr. Coleman?
A. 301 Friedrichs Avenue in Metairie.
Q. What is your occupation?
A. Vice-President and Circulation Director of the Times-Picayune New Orleans States-Item.
Q. How long have you occupied that position?
A. For the last twenty-six years.

Q. Now, the New Orleans States-Item is published in the City of New Orleans?

A. Yes, sir.

Q. Did you have occasion to review the records, at my request, of the publication and circulation of the home and final editions of the New Orleans States-Item of November 2, 1962?

[fol. 278] A. Yes, sir.

Q. And what did your inspection reveal?

A. My inspection revealed that on November 2 we printed gross, final edition of the New Orleans States-Item, 44,587 and the approximate net sales of those 44,587 was 41,202 in the City of New Orleans and we re-printed 35,490 for the City of New Orleans. We printed 35,490 and we had 2,084 returns or net sale of 33,406.

Q. Mr. Coleman, I show you "Exhibit No. 1" and ask you if you can identify this as a part of your final edition of the States-Item which was published on November 2, 1962 and as to which facts you just testified relating to this particular edition?

A. Yes, sir, I do.

Mr. Gremillion: We tender the witness.

Mr. Organ: We have no questions, if the Court please.

(Witness excused.)

Mr. Gremillion: We have one witness we should be calling now but he had a death in his family last night, Mr. Walter Cowan, by whom we intended to prove that the statement as reported by Mr. Hyde or the quotes of Mr. Garrison was not changed or was printed as given to him, and we'd like to ask permission to call him whenever he is available this afternoon, unless you want to admit that, Mr. Organ.

[fol. 279] Mr. Organ: Admit what?

Mr. Gremillion: Admit that he would testify to that; stipulate as to his testimony. That's all we are calling him for, to testify that what was printed was given to them by Mr. Hyde.

Mr. Organ: We will stipulate that.

Mr. Gremillion: Does the Court wish to dictate it or you want me to?

The Court: Go ahead.

Mr. Gremillion: It is stipulated between the State and the Defense, that Mr. Walter Cowan, City Editor of the States-Item, would testify that he received over the teletype the report of the quotations of the statements made by Mr. Garrison on Friday, November 2, 1962, and that they were published without any re-writes and were the same and identical report given to them by Mr. Hyde of Mr. Garrison's statement. Is that satisfactory?

Mr. Organ: I think it should be made clear that the statement is the portion of the printed statement which is in quotes and it does not include the preface to it, nor does it include the portions of it which are obviously comments on enclosures—comments by the editor.

(Discussion off the record.)

STIPULATION RE TESTIMONY OF WALTER COWAN

The Court: It is stipulated by Counsel for the State and Counsel for the Defendant, that that portion of the [fol. 280] article published in the States-Item of November 2, 1962, copy of which has been filed in evidence here, that that portion of the statement that is in quotations was taken from the teletype by Mr. Walter Cowan without any change and the portion being in the record in quotations was the statement by Mr. Garrison and was published in this edition of the paper. I believe that's what you wanted?

Mr. Gremillion: Yes, sir.

ARTHUR ROANE, called as a witness by the Plaintiff, after being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Gremillion:

Q. What is your name, please?

A. Arthur Roane.

Q. Have you been sworn?

A. Yes, I have.
Q. Where do you live?
A. 1025 St. Peter Street, New Orleans.
Q. What is your occupation?
A. I am a newspaper reporter.
Q. Where are you assigned as a newspaper reporter?
A. To this building, Criminal Courts Building.
Q. Who are you employed by?
A. Times-Picayune.
[fol. 281] Q. Were you present in the District Attorney's office—Mr. Garrison's office—on the morning of November 2, 1962?
A. Yes, I was.
Q. Do you know Mr. Garrison?
A. Yes, I do.
Q. Is he present in Court?
A. Yes, he is.
Q. Would you point him out?
A. He is right here, wearing the striped tie.
Q. Did you report anything that Mr. Garrison said as a result of your presence there that morning?
A. Yes, I did.
Q. Were you there for the entire period of the interview?
A. Yes, I was.
Q. Who did you see there besides yourself?
A. I remember Mr. Gervais was there and several other of Mr. Garrison's assistants were there but I can't remember which ones. They came in and they left.
Q. Did you see any other newspaper reporters there?
A. Yes.
Q. Who?
A. Mr. Bert Hyde.
[fol. 282] Q. Anyone else—any other reporters?
A. No.
Q. Did Mr. Garrison make a statement to you then?
A. Yes, he did.
Q. How did you make notes of it?
A. In longhand.
Q. Did you tell him anything of your reasons for being present?

Mr. Organ: I object.

Mr. Gremillion: Strike that.

Q. What was your reason for being present?

A. I wanted to ask him if he had any comment about William O'Hara's statement that appeared in the paper that morning.

Q. Was this in connection with your duties as a reporter?

A. Yes.

Q. Did you tell him that you were a reporter for the Times-Picayune?

A. No, he knew it.

Q. At any time during the period that Mr. Garrison made his statement, did he say any of it was off the record or he didn't want to be quoted on any portion of it?

A. Not that I can recall.

Q. Have you read the article that appeared in the States-[fol. 283] Item that has been introduced in evidence as "State Exhibit No. 1"?

A. Are you referring to the quoted part?

Q. Yes.

A. Could I see it?

Q. Yes (presenting to witness). Is that the statement you heard Mr. Garrison make at that time?

A. Yes, it is.

Q. Did you make a report of this statement to your paper?

COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Organ: Excuse me. If the Court please, we are going to object to that. The bill of information in this case charges the defamation resulting from the publication in the New Orleans States. Now, this reporter testified that his paper is the Times-Picayune. He is not charged with defamation as a result of publication in the Times-Picayune. That statement is irrelevant and immaterial that he reported to the Times-Picayune.

The Court: What is the purpose of this question?

Mr. Gremillion: The purpose of the question is to show that the statement was made to several people and was not only published in this particular paper charged in the bill of information. It was published in other papers, the

report was made of it to other papers and the purpose of this is to show notoriety, show circulation and to show part [fol. 284] of the malice system and intent.

Mr. Organ: If the Court please, if that's what they want to show, it should be in the bill of information that this was published in the Times-Picayune. There is nothing in the bill of information; that is strictly on the New Orleans States.

Mr. Gremillion: We recite and charge malice in the bill of information.

The Court: I think you have a right to show the malice which has been recited and that alone.

Mr. Gremillion: I want to ask him if it was published in his paper.

Mr. Organ: I'd like to make my bill of exceptions. The Court has ruled and I'd like to follow with my bill.

The Court: Let me put the reason for my ruling in the record. The Court rules that solely for the purpose of showing malice, this evidence will be admissible and is restricted to the question of showing malice. There has been raised in the preliminary motion filed herein the question of a qualified privilege by the Defendant and if the Court finds that it was in fact a question of law; that there is a qualified privilege, then the burden of proof would shift to the Plaintiff—to the State—to show malice—actual malice, regardless of the truth or falsity of the statement. So for that reason, the evidence is admitted solely for the pur- [fol. 285] pose of showing malice. Now, you may answer the question and you may reserve your bill.

Mr. Gremillion: I also want to show that the bill of information recited, " * * * and did publish and express in the public press of the City of New Orleans," so we have charged that in the bill of information. I want to call that to the Court's attention.

Mr. Organ: May I reserve my bill without any further proceedings?

The Court: The question and answer will go in the record, you understand that?

Mr. Organ: We appreciate that but we would like to reserve our bill in response to your Honor's ruling.

The Court: That will be Bill of Exception No. 6.

Mr. Organ: To the ruling of his Honor on the question which is pending, we would respectfully reserve Bill of Exception No. 6. Included in this Bill of Exception is the question, our objection, the ruling of the Court, the testimony in the case, the record and the bill of information. The statement by Counsel of the objection is based upon the fact that criminal defamation is not a crime of intent and that evidence of similar acts are only admissible in cases where intent is part of the crime.

The Court: Off the record.

Mr. Organ: I am trying to make clear our position on [fol. 286] this, if the Court please. It may come up again during the course of the trial. Intent is not, in our opinion, a part of the crime of criminal malice—I mean criminal defamation—and only where intent is a part of the crime are acts of similar nature admissible in evidence. Also, one of the defenses which is raised, as your Honor pointed out, is a qualified privilege. We believe that the bill of information shows that this is a comment on people in public affairs, a reasonable comment based on reasonable belief and, therefore, since this statement is a qualified privilege, there is a presumption that there is no malice contained therein and we rely on *State vs. Alexander*, 216 La. 932, 45 So. 2d, 83.

The Court: Let me see that bill of information. The objection made by Counsel for the Defendant is urged on the question of intent and the Court has restricted the question to the question of showing malice and therefore the question of intent does not enter into the consideration of this evidence at this time. Further, the bill of information contains an allegation that these articles or statements were published and expressed in the public press in the City of New Orleans, to persons other than those defamed. The Court will set forth more fully its legal reasons for this ruling on these bills of exception in its per curiam, which will be attached to and made part of the bill of exceptions.

[fol. 287] Q. I believe you testified that this was the same statement that was made in your presence and to you?

A. Yes.

Q. I asked you did you report this statement to your paper?

A. Not in its entirety.

Q. But you did report portions of this statement to your paper?

A. Yes.

Q. Did you report this—I am quoting from "Exhibit No. 1" which you have already seen.

> "This raises interesting questions about the racketeer influences on our eight vacation minded judges. This is a matter regarding which I will have much more to say a little later."

Did Mr. Garrison make that statement to you and did you report it?

Mr. Organ: If the Court please, I object to that, for several grounds. No. 1, on the grounds that it's taking a portion of that statement out of context and the entire statement is not being reported to the persons to whom he transmitted it and, therefore, since it was taken out of context, the meaning of that statement, taken out of context, has no relationship to the crime alleged.

[fol. 288] The Court: I think you have to go into the full statement, Mr. Gremillion, as to whether or not that statement was made in his presence.

Mr. Gremillion: I just asked him but I will ask him again.

Q. Was this statement reported in the States-Item that was made to you by Mr. Garrison on November 2, 1962?

A. The question you just read?

Q. You previously identified this article was a statement that Mr. Garrison made, is that correct?

A. Yes.

Q. Now, the paragraph that I just read, was that a part of the statement that he made?

A. Yes, it was.

Q. Did you report that and was that published in your paper?

A. Yes.

Mr. Organ: If the Court please, I object to that. Again, the answer was given before I could object. I object to that on the grounds that the last question did not state specifically what the Attorney General meant—whether he is talking about the entire statement or just the portion which he quoted.

The Court: I think it would be better, gentlemen, if you have him identify the quoted part of the statement and [fol. 289] say whether or not that was made.

Mr. Gremillion: I'd be very glad to do that, your Honor. I thought I had already done that several times. Right here, "This raises interesting questions about the racketeer influences"—

Mr. Organ: If the Court please, we re-urge our objection. We thought our objection was sustained. We re-urge our objection to going into specific portions of this unless the entire statement was reported to the people he is talking about.

Mr. Gremillion: He has already identified it.

The Court: Let's go off the record.

(Discussion off the record.)

Q. Look at the statement, "Exhibit 1," which I just showed you a minute ago. Does that contain the statements that Mr. Garrison made to you in his office on November 2, 1962?

A. Yes, sir, it does.

Q. Have you interviewed Mr. Garrison on occasions after November 2, 1962?

Mr. Organ: I object to that, if the Court please, on the grounds that it's irrelevant and immaterial and on the grounds that it's a leading question.

The Court: Objection overruled.

A. Yes, I have interviewed him many times since then. [fol. 290] Q. Do you recall having interviewed him on November 9, 1962 or thereabouts?

A. It's quite possible. I don't remember that particular date. I see him very frequently.

Mr. Gremillion: For the purpose of refreshing the witness' memory, I'd like to show him an article which appeared in the Times-Picayune, which we are going to prove that he wrote.

Mr. Organ: If your Honor please, I am going to object to that on the ground, No. 1, it's—

Mr. Gremillion: I haven't had an opportunity of showing him what it is. I don't know how you can object to it.

(Discussion off the record.)

The Court: You present your document, you make your objection and I will make a ruling.

A. (Examining document presented.) Yes, I wrote this story.

Q. Do you recall where that information was given to you?

A. Well, it wasn't all given to me. I had to cover it and get it from various places in the building.

Q. Did Mr. Garrison make this statement to you?

Mr. Organ: If your Honor please, I object to that. He [fol. 291] hasn't testified Mr. Garrison made that statement to him. He said he wrote that story, that's all.

The Court: Ask him if he made the statement.

Q. Did he make a statement to you on November 9?

A. I suppose he did. He makes statements to me very often.

Q. Did he make a statement to you that he threatened to take racketeering influences of the Judges to the Grand Jury?

Mr. Organ: If your Honor please, I object to that as grossly leading. The witness has not said in any way that Garrison made the statement that's contained in there.

The Court: Mr. Gremillion, ask him what Mr. Garrison's statement was instead of trying to tell him.

Q. What was Mr. Garrison's statement to you?

A. You are referring to this particular question there?

Q. The article that you just refreshed your memory on.

Mr. Organ: Now, if the Court please, this is something that took place subsequent to the alleged defamation. We re-urge our objection to that for any purpose whatever. It's not relevant and not material, what Mr. Garrison may have said after the portion that was quoted in the November 2, 1962 statement. It has nothing to do with the case— [fol. 292] malice or for any other purpose. We object to going into subsequent statements at any other time, other than what was charged.

The Court: The objection is overruled. The statement is admitted for the purpose of showing malice and Courts have held that statements made even after the time are admissible if they are connected with it.

Mr. Organ: To which ruling we respectfully reserve Bill of Exception No. 7 and we ask—

The Court: Off the record.

(Discussion off the record.)

Mr. Organ: We will make this Bill of Exception No. 8 and ask to be included in that bill the question, the objection, the answer, the Court's ruling, our reasons for the objection to it, all of the testimony of the case, the bill of information and the entire record.

Q. Did Mr. Garrison make that statement to you?

A. Yes. I don't know if it was on the particular date preceding this paper but he has said that to me.

Q. Were you present on a program known as "The Working Press" on January 19, 1963, which was conducted over TV Station WYES?

A. Yes.

Q. Was Mr. Garrison on that program?

A. Yes, he was.

[fol. 293] Q. In what capacity was he on that program?

A. As the District Attorney. He was the man being interviewed.

Q. What was your capacity on the program?

A. I was one of the people interviewing him.

Q. Who else was on the program besides yourself?

A. The moderator was Charles Brennan and the other man questioning Mr. Garrison was Henry Tellus of WWL-TV.

Q. Did you talk to Mr. Garrison about this case?

A. Yes, I asked him one or two questions about it.

Q. What were the questions you asked him and what was his reply?

Mr. Organ: If your Honor please, we would like to make our objection and bill of exception general without the necessity of repetition, to all these statements that are supposedly made after the one of November 2, in order that we will not have to keep repeating our bill of exception and ask that it apply to all of the evidence of this witness in that respect.

The Court: All right.

Mr. Organ: We also wish to point out that the date mentioned about which he is being interrogated now was after this charge was filed—was long after this charge was filed—January 19 or whatever it was, just a few days ago.

The Court: Let the objection and ruling of the Court be [fol. 294] made general to all of this line of questioning to these statements made by Mr. Garrison to the various parties at different times after the original statement of November 2, 1962 and the Court enforces—sustains its same ruling that it is now for the sole purpose of showing malice and restricted to that.

Mr. Organ: I ask that our bill of exception be made general and apply to all of this testimony.

The Court: You reserved your bill to all of the general questions.

Q. Mr. Roane, tell us what you asked him and what he told you.

A. I can't remember the exact words. I can give you the substance.

Q. Give us the substance.

Mr. Organ: I am going to object to this, if the Court please. This is a criminal trial. This man is on trial here for his freedom and if the witness can't remember what was said verbatim, it has no place in this record. The substance of it is his impression.

The Court: Did you have a record?

Mr. Gremillion: No tape was kept of this, your Honor. Maybe I can clear this up.

Q. Did you ask him this question: "Jim, if you had to do this again, would you do it all over the same way?" [fol. 295] Did you ask him that question?

Mr. Organ: I object to the leading question, if the Court please. The question is grossly leading.

The Court: Mr. Gremillion, if you don't have any account of it, if he can't remember the conversation, I don't think, unless the whole conversation was kept?

Mr. Gremillion: If your Honor please, let me see if I can refresh his memory.

Q. Did you ask him that question?

A. I can't give you the exact words that I asked him and the exact words that he answered to me.

Q. What did he tell you in reply to your question?

Mr. Organ: The witness has already testified he can't give the exact words and we do object to the Attorney General refreshing his memory with leading questions.

The Court: I sustain you on that.

Mr. Gremillion: I think he can give the substance if he can't give it in its entirety.

The Court: If he remembers what he said to him in its entirety, even though he can't say it verbatim.

Mr. Gremillion: That's what we are talking about.

The Court: That's admissible.

A. Yes, I asked him that question.

Q. Tell us what you asked him. Even if you can't remember it verbatim, tell us in substance what you asked him [fol. 296] and what was his answer.

A. I asked him that question.

Q. What question?

A. I asked him, "If you had to do it over again, would you do it the same way?" Included in this question were a couple of prefatory remarks by me.

Q. What was his answer?

A. His answer was, "Yes, I would." That is not verbatim, of course. His answer was a little bit longer and more explanatory.

Q. Do you recall anything else that you asked him at that time?

A. I asked him if he expected to win this trial.
Q. What was his answer?

Mr. Organ: I am going to object to that. That has no place whatever in this case, whether the defendant believes he is going to be convicted or not convicted. It's entirely irrelevant and entirely immaterial.

The Court: Unless he made some other statement, other than yes or no, the objection is sustained.

Mr. Gremillion: I can't tell until we get his answer, your Honor.

The Court: I think if he made any statement in connection with the answer, the statement would be admissible but his opinion as to whether or not he would win or wouldn't [fol. 297] win would not, of course, be material.

Q. What was his answer?
A. He said it would be up to Judge Ponder.
Q. Did you ask him anything else?
A. I asked him a number of questions. I don't remember if any others were about this trial.
Q. Nor, Mr. Roane, on or about November 8, do you recall Mr. Garrison making a statement to you concerning his offer to apologize?

Mr. Organ: If the Court please, I object to that. That is grossly irrelevant and immaterial to this case. It has absolutely nothing to do with the case.

The Court: What is the purpose of the question?

Mr. Gremillion: To show an admission of guilt; to show admission against interests.

Mr. Organ: If the Court please—

The Court: You can ask him if he made a statement about it. Let's go off the record.

(Discussion off the record.)

Q. Do you recall such a statement?
A. Yes, but I'd like to explain something, if I may.
Q. Go ahead and explain.
A. I had reported in the paper that the District Attorney had apologized to the Judges in private but refused to do so [fol. 298] in public and he saw me—I am saying now some,

thing that he wanted to be quoted on or put into the story in the future.

Q. Who wanted to be quoted on it?

A. The District Attorney.

Q. And he told you this?

A. Yes.

Q. Go ahead.

A. He said, "I didn't apologize to the Judges. I offered to apologize," and he said if I could work that into the story some time, he would like to see it.

Mr. Organ: If the Court please, I move that the entire testimony be stricken, on the grounds that it in no way whatever could be construed to show any malice whatever and it is offered by the Attorney General, we believe, to prejudice the Defendant's case.

The Court: Let the question and answer be stricken from the record.

Mr. Gremillion: That's all.

Cross examination:

By Mr. Organ:

Q. Mr. Roane, you went to Mr. Garrison's office on instructions from your superior on the date that he made the statement that was published in the New Orleans States on November 2, which is in evidence?

[fol. 299] A. Well, I didn't specifically go there on my superior's instructions. My instructions are to cover this building and that way I felt it was part of my job.

Q. You did not go there at the request of Mr. Garrison?

A. No, I did not.

Q. And you went there to find out if he would give you a statement in response to a statement which had previously been published by former Judge William O'Hara, is that correct?

A. Yes, primarily.

Q. And you asked him if he would give you a statement in response to what was published about Judge O'Hara's statement?

A. Yes.

Q. In his statement he was answering what Judge O'Hara had said and other matters relating to the same subject matter of Judge O'Hara's statement?

A. Yes.

Q. Now, he did not make any effort whatever to make sure that that was published, did he?

A. No.

Q. He did not highlight any particular part of his statement, did he?

A. No, he didn't.

[fol. 300] Q. Mr. Garrison did not have any appearance of belligerance toward any of the eight Criminal District Judges at that time, did he?

A. No.

Q. Did Mr. Garrison make any special effort to get Mr. Hyde to publish that statement, in your presence?

A. No, he didn't.

Q. Now, subject to our objection, your testimony regarding this "Working Press" conference the other day, your testimony is you do not remember all of the conversation regarding this particular defamation charge, is that correct?

A. That program lasted for half an hour and thousands of words, probably.

Mr. Gremillion: I object to that. That isn't his testimony at all.

Mr. Organ: I am asking him. He is under cross examination.

The Court: He is asking him.

Q. I will rephrase my question for clarity, Mr. Roane. At that "Working Press" conference, do you recall substantially everything that was said regarding this case and these charges?

A. I think so.

Q. You are not sure?

A. Well, if you ask me if five questions were asked, I [fol. 301] couldn't say four, five or seven or two, I don't remember the exact number; I couldn't.

Q. Do you know the substance of each question and answer that was asked and answered pertaining to this criminal case?

A. I think so.

Q. If we were to ask you to, could you relate each one?

A. I think I could relate the answers to the questions that I asked, perhaps the other men too.

Q. Perhaps?

A. Perhaps.

Mr. Organ: At this time, if the Court please, we move that the portion of this man's direct testimony relating to that "Working Press" conference be stricken, on the grounds that it's obvious that his memory is not sufficient to bring out all of the facets that were asked and the questions during that conference regarding this case.

The Court: The only requirement of the law is that he must remember the substance of the conversation. It does not need to be remembered verbatim, every word that was said, because it would be impossible for anyone to remember verbatim everything that was said during a conversation. Therefore, the motion is overruled.

Q. Now, when Mr. Garrison made this statement or when [fol. 302] you asked him that question, "Would you do it all over again?" did you specify what you meant by that?

A. Yes, I did. I was referring to the quotes on that, particularly the racketeering influences—the comment that he made.

Q. Did you so state to him?

A. I don't think I used the word "racketeering force." I think I referred to the statement and the seriousness of the statement and the importance of it.

Q. In other words, when you asked him that question, "If you had to do it all over," you didn't say would he make the statement about racketeering influences if he had that to do all over again?

A. As best as I can recall, I didn't use those two words.

Q. Can you recall just what part of this statement that you asked him specifically about?

A. I asked him about the statement.

Q. The entire statement, is that correct?

A. I asked him, yes, would he make his statement over again.

Q. And the fact that you had in mind the particular reference to racketeering influences doesn't necessarily mean that Mr. Garrison had that in mind, does it, when he answered you?

[fol. 303] A. No.

Q. Now, how long have you been covering the Criminal Courts Building?

A. Since the beginning of May—same time that Mr. Garrison took office.

Q. 1962?

A. Yes.

Q. In that capacity, what do you have to do in the various courtrooms in the various sections of the Court?

A. Oh, I try to report what is newsworthy in all the sections.

Q. You go into these sections?

A. Yes.

Q. Do you see what is being conducted in open Court?

A. I try to, as much as possible.

Q. Do you see the Judges when they take the bench frequently and in chambers?

A. I see the Judges frequently on the bench and I see them in chambers occasionally.

Q. Do you cover Section "E"?

A. Yes.

Q. Who is presiding Judge there?

A. Judge J. Bernard Cocke.

Q. Have you ever seen Judge Cocke in his courtroom [fol. 304] on a Friday?

A. Yes—no, I have to take that back. I have not.

Q. You have never seen Judge Cocke in his courtroom on a Friday?

A. No, not on the bench.

Q. Now, do you cover Judge Platt's section, Section "B"?

A. Yes.

Q. Since May, do you recall how many trials you have witnessed in Judge Platt's section?

A. Section "B"?

Q. Yes.

A. I haven't witnessed any.

Q. Not one single trial?
A. No.
Q. Is that correct?
A. That's right.
Q. Is it very frequent, Mr. Roane, that the Criminal Courts here adjourn at noon and all their business is finished and there is no more courtroom business for the balance of the day?
A. Yes, if there is not a trial. This is arraignments and pleadings.
Q. But it is a frequent thing?
[fol. 305] A. Yes.

Mr. Organ: We have no more questions of this witness, if the Court please.

Redirect examination.

By Mr. Gremillion:

Q. Mr. Roane, do you have any personal bias or prejudice against Mr. Garrison?
A. No, I don't.
Q. He is a good friend of yours, isn't he?
A. He is an acquaintance. I consider him an acquaintance, yes.
Q. You are on friendly terms with him?
A. Yes, we are.
Q. Now, has he ever denied to you any of the statements that he made that were published in the States-Item, to you, as a result of the article that was published on November 2?
A. No.
Q. Or the others?
A. No.
Q. Has he ever denied to you any of the articles which you have reported in your paper as being untrue?

Mr. Organ: I object, if the Court please. The articles that this man reports in his paper are no part of this case so far. We don't know what the articles are.
[fol. 306] Mr. Gremillion: He has made a lot of statements to this man and all we want to know is whether they

were correctly reported. We want to show he never complained about it and his method of reporting is correct.

(Discussion off the record.)

Mr. Gremillion: I withdraw the question. That's all.

Recross examination.

By Mr. Organ:

Q. You are on good terms with all of these Judges out here?

A. Yes.

Q. You are on good terms with Judge Cocke in Section "E"?

A. Yes.

Q. Are you on good terms with Judge Platt in Section "B"?

A. Yes.

Q. And all of the other Judges?

A. Yes.

Q. And you know them as a reporter and them as Judges, just like you know Mr. Garrison as a reporter and also as District Attorney?

A. That's correct.

Q. You said that you never saw Judge Cocke try a [fol. 307] case on Friday. How many times have you been in Judge Cocke's court during the past year?

A. Well, I have been covering this beat since the beginning of May.

Q. You said under cross examination that you never saw Judge Cocke try a case on Friday but you saw him in his courtroom. Can you explain that?

A. I didn't say I saw him in his courtroom. I said I possibly might have seen him in his chambers on Friday occasionally.

Q. Where are his chambers with reference to his courtroom?

A. Adjacent to them.

Q. Right in the rear of the bench, is that correct?

A. Yes.

Q. And you saw him in there?
A. I may have; very good chance that I did.
Q. What was he doing when you him?
A. Probably working on some law books.
Q. Do you know what he was doing?
A. Yes, I have seen him occasionally. Sometimes he is doing some research.
Q. Do you specifically recall seeing that on a Friday?
[fol. 308] A. No.
Q. So to the best of your memory, you have never seen Judge Cocke in his chambers or his court on Friday, isn't that right?
A. I can't remember whether it was Monday through Friday exactly. I don't want to deny that I have never seen him in his chambers on Friday.
Q. But you know you have never seen him try a case on Friday?
A. That's right.

Mr. Organ: No further questions.

(Witness excused.)

R. J. Dempsey, called as a witness by the Plaintiff, after being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Gremillion:

Q. What is your name?
A. R. J. Dempsey.
Q. What is your occupation?
A. Police reporter, New Orleans States-Item.
Q. What is your beat?
A. Police Headquarters, Criminal District Courts Building.
Q. You know Mr. Garrison?
[fol. 309] A. I do.
Q. Is he in the courtroom?

A. He is.

Q. Would you point him out?

A. He is the Defendant at the bench.

Q. Were you present in Mr. Garrison's office on November 2, 1962?

A. I was.

Q. Would you tell us who was there with you in his office?

A. Bert Hyde, reporter for the New Orleans States-Item. Art Roane, reporter for the Times-Picayune.

Q. Do you recall the time of the day?

A. It was in the morning.

Q. Who else was in the room besides those named?

A. As I recall, Pershing Gervais, investigator, Mr. Frank Klein, Mr. Frank Shea, at different times. They didn't stay there all the time, of course.

Q. Did you stay in there at all times?

A. No, sir, I didn't.

Q. What was Mr. Garrison doing on this occasion?

A. He was responding to an interview by Bert Hyde and Art Roane.

Q. What were Mr. Hyde and Mr. Roane doing?

A. They were taking down copious notes in response [fol. 310] to the interview.

Q. Did you hear any of the interview that was transpiring?

A. I did.

Q. What did you hear?

Mr. Organ: If the Court please, the witness has testified that he was not there during all of this interview and it's irrelevant and immaterial if he heard a portion of the statement that was being made at that time. We object to it.

Mr. Gremillion: The purpose of this is to identify that the interview did take place and that certain statements were made in the room regarding the interview.

The Court: Just ask him that.

Mr. Gremillion: That's what I was trying to do.

Q. What happened?

Mr. Organ: We will stipulate that the interview took place and that Mr. Hyde and Mr. Roane reported—Mr. Hyde reported it to his newspaper and it was published. We don't deny this interview.

Mr. Gremillion: You admit that the statement was made?

Mr. Organ: No question about it; no doubt about it.

Q. Did Mr. Shea tell Mr. Garrison anything about the [fol. 311] statement?

Mr. Organ: I object, if the Court please. That has nothing whatever to do with this case; no part of the bill of information. Mr. Shea is not on trial here and has nothing whatever to do with this.

Mr. Gremillion: This goes into the question of malice. That is the purpose of the question. All I am asking him is to tell me what one of the assistants said in the room—what he told Mr. Garrison in Mr. Garrison's presence.

Mr. Organ: I object to that.

The Court: For the purpose of showing malice and restricted to that purpose alone.

Mr. Organ: I wish to reserve Bill of Exception No. 9 on that. I'd like the question, the answer, the objection, the ruling of the Court, all of the information, the bill of information, the record and all of the testimony in our Bill of Exception No. 9. They are trying to go into what Mr. Shea said, not what Mr. Garrison said.

(Discussion off the record.)

The Court: The objection is sustained.

Mr. Organ: In view of the Court's ruling, we will cancel our Bill of Exceptions No. 9 in this case, and our next bill will be properly taken.

Q. Mr. Dempsey, has Mr. Garrison made any other statements to you regarding this matter about the Judges and [fol. 312] so forth?

A. Did I ask Mr. Garrison anything about this matter at that time? You want to know on this day?

Q. On that particular day.

A. On that particular day, did Mr. Garrison make any other reference to the Judges, is that your question?

Q. Yes, to you.
A. No, sir.
Q. At any other time, did you ask Mr. Garrison about this matter, as to how he felt about the Judges?
A. Regarding an apology to the Judges?
Q. Yes.
A. I have asked that question, yes.

Mr. Organ: I am going to object to that, if the Court please. Apology to the Judges obviously has no malice connected with it.

The Court: Any statement that he might have made with reference to it. I have ruled on it. You have already made objection and gotten a ruling. I am the one who has to pass on whether or not Mr. Garrison made these statements.

Mr. Gremillion: I am just trying to ask him a direct question.

Q. Did Mr. Garrison make any statements to you on or about August 20, 1962 with reference to that matter?

Mr. Organ: If your Honor please, this is long before [fol. 313] the alleged criminal defamation—prior thereto. We object to any statements or anything that occurred prior to that as not being relevant or material to this case and certainly with the lapse of time—August 20—certainly could not show any malice.

Mr. Gremillion: This relates to the statement that Mr. Garrison made on November 2 and is designed to show malice. In other words, he made a statement to this reporter which was published and which he reiterates part of in the statement that he made on November 2 to these two reporters and this is strictly to show malice. We refer to it in the bill of information and it's pertinent and relevant to this matter.

The Court: Off the record.

(Discussion off the record.)

The Court: For the purpose of showing malice and for that purpose alone, the Court will allow it to go in. We will recess until one-fifteen.

(Thereupon, at 12:05 o'clock p.m., the trial was recessed, to be resumed at 1:15 o'clock p.m.)

[fol. 315] (Pursuant to the recess, proceedings in the above-entitled and numbered cause were resumed at 1:15 o'clock p.m., appearances being the same as heretofore noted in the record.)

The Court: Are you ready to proceed?

Mr. Gremillion: Yes, Your Honor. Call Mr. Jack Dempsey. He was on the stand.

COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Organ: Your Honor, while we are getting Mr. Dempsey, just before the recess Your Honor ruled that this evidence would be admissible for the purpose of showing malice. Am I correct?

The Court: I believe you are correct.

Mr. Organ: All right. We would like that our objection and our bill of exception, which applied to any statements taken after the alleged defamatory statements also apply to any statements taken before the alleged defamatory statement, you see, so that we will not have to continually make the same objection.

The Court: All right. Is Mr. Dempsey here?

Mr. Gremillion: They have gone for the witness, Your Honor.

Mr. Organ: The record shows that Your Honor granted our request.

Mr. Gremillion: I can save a little time while we are waiting for this witness. It is stipulated between the State [fol. 316] and the Defense that this witness, Mr. Jack Dempsey, reported in an article which was contained in the New Orleans States-Item of Monday, August 20, 1962, and that the following statements were made to him by Mr. Garrison and reported, to-wit:

Mr. Organ: Let's see if we can't clarify—there's only a couple of quotes in there by Mr. Garrison, but I think is that whoever the statements are attributed to did report them to Mr. Dempsey.

Mr. Gremillion: I think they speak for themselves.

Mr. Organ: I think they speak for themselves, too. Mr. Garrison didn't give all the information. That is obvious from the text of it.

Mr. Gremillion: I am not trying to be argumentative. I am just trying to get the record straight. If this is his report, I think this is what we both want in.

Mr. Organ: That is correct.

Mr. Gremillion: The report published that particular day. (Reading.)

"District Attorney Jim Garrison will return to town today with First Assistant Attorney Frank J. Klein from Philadelphia where they attended a National District Attorneys' Convention. Confirming the action taken by Judge O'Hara and his two colleagues, he [fol. 317] he said, 'The action does not apply to emergency cases such as extradition proceedings. The Judges want to set up a system,' said Garrison, 'and I think they are right.' Garrison said, 'When they took office, there was only $1,200.00 in the Fines and Fees Fund, which by law the District Attorney's Office supervises. We built up that fund from forfeit bonds to where there is presently in excess of $ 000.00. We would like to buy new furnishings for the office at no expense to the citizens and will set up a policy of calling for bids on all purchases, so that both the spirit as well as the letter of the law will be upheld.' Garrison volunteered he may go into his pocket to pay several bills now due in order to protect the good faith and credit of the District Attorney's Office. He said he may draw a loan from one of the banks to pay off certain bills in order to live up to the contracts. Two stenographers have been added to the [fol. 318] D.A.'s staff in recent weeks to replace two regular employees on vacation. Inasmuch as the Judges have declined to sign judicial orders on the Fines and Fees Fund, it may be that Garrison will have to make the bank loan to see that they will be paid their salaries on schedule. Judge O'Hara has stressed that the decision in no way casts any reflections on the District Attorney or his staff. However, he has expressed a

desire to revamp the administration of the funds and will meet in October in an en banc session to that end."

(Reporter's Note: The article quoted was not available to the reporter at time of transcription for verification, and the above is a transcription from the notes as they lay.)

And I would like to—

The Court: Off the record.

(Discussion off the record.)

The Court: Take this for the record, please.

Mr. Gremillion: Let me just say this for Your Honor before you rule. Your Honor, let me say for the record [fol. 319] that it is our contention that this is all part of a scheme, to show intent, which goes to prove system, which goes to prove malice, and that we will connect these things up as we go along. I can't put my case on all at one time. It is going to take me a couple of days at least, but all of this is part of the program that shows defamation, and that is our reason for wanting to put it in the record.

The Court: At this time, the Court will not permit it to be made a part of the record for the reason that the Court is allowing these statements made upon other occasions, both before and after the alleged defamatory statements, for the sole purpose of showing malice. The statement offered does not show a malicious intent, but rather an intent of cooperation, and, although it might be inconsistent —or perhaps any future actions in the matter of protecting the person who is not before the Court from the inconsistency—but under the actions or statements made which may be in any manner defamatory in connection with the statement that was issued in the press of November 2, 1962, I will say at this time that I am ruling it out at this time for the reason that I don't think the record at this time justifies the introduction of the statement. If the record subsequently justifies the introduction of the statement, then the Court will allow it filed, but at this time I do not consider it admissible in evidence.

[fol. 320] Mr. Gremillion: Well, as I understand it, we will have the right to re-offer it in the event we can connect it?

The Court: If you can show that it would have legal effect in the trial, of course it can be offered.

Mr. Organ: I am sorry. I didn't hear Your Honor.

The Court: I am sorry—I am not equipped with a microphone here—that everybody seems not to be able to hear me. I did not allow this to be introduced. Did you want to reserve a bill, or did you not?

Mr. Organ: No, no. The only thing is that I asked Your Honor to make our objections to these statements apply to statements made before as well as after. We have no specific objection to this, to what he was there introducing, and we have no bill.

The Court: You want to allow it to go in then?

Mr. Organ: We will allow it to go in.

The Court: I didn't think you wanted to. I didn't think you thought it was admissible.

Mr. Gremillion: Your Honor, we offered it as a stipulation.

The Court: All right. Mark that as "State's Exhibit No. 2."

Mr. Gremillion: May I be off the record just a second?

[fol. 321] The Court: Yes. Off the record.

(Discussion off the record, during which the document offered by stipulation between the parties was duly marked for identification as "State's Exhibit No. 2" and received in evidence.)

R. J. Dempsey, having been sworn and having testified previously, resumed the stand for a continuation of the

Direct examination.

By Mr. Gremillion:

Q. Mr. Dempsey, did you have any further discussions with Mr. Garrison concerning this case as to what activities he might take against the Judges?

A. Yes, I did.

Q. When was that, and tell us what you were asking.

A. I wouldn't remember the exact date. However, in his office at a subsequent time I asked the question if he considered taking this matter before the Orleans Parish Grand Jury, and he indicated that he did.

Q. Did you ask him what he meant by his comment, by any of his comments, in a subsequent conversation or a conversation about this time?

Mr. Organ: I am going to object to that. I don't know what comments Counsel is referring to.

[fol. 322] Mr. Gremillion: If you will let him answer, maybe he will—

Mr. Organ: I think the record should show what comments the Attorney General is referring to. Comments about the Grand Jury?

Mr. Gremillion: I am speaking about the comments about taking this before the Grand Jury.

Q. Did he tell you what he intended to take before the Grand Jury?

A. Yes, yes, he indicated that he was seeking three witnesses, three witnesses who would be called before the Grand Jury in connection with this case. His investigators reportedly went out to subpoena these witnesses to bring them in, but it never materialized.

Q. Well, did he tell you the purpose of this?

Mr. Organ: If the Court please, the obvious purpose for bringing anything to the Grand Jury is to either seek a true bill or no true bill. Now, I don't think that this witness is competent to go into the purpose of that.

The Court: He can repeat what Mr. Garrison might have said in that connection, and you can make your general objection to that.

Q. Did Mr. Garrison refer to you the charges against the Judges that he was thinking about taking before the Grand Jury? Concerning what?

[fol. 323] A. I don't think he used the word, but I understood malfeasance charges. However, in fairness to Mr. Garrison, I don't believe he used that word, malfeasance.

Q. Did he tell you whether or not he was figuring on bringing any charges against the Judges concerning any influences?

Mr. Organ: Now, if Your Honor please, this is grossly leading.

Mr. Gremillion: No, it is not.

Mr. Organ: It is grossly leading the witness, if the Court please, and I submit it is irrelevant and immaterial if Mr. Garrison considered bringing charges against the Judges. He is the District Attorney, and that is the District Attorney's duty. It can't possibly be malicious if he is considering bringing charges. Why, that is his absolute duty under the law. If he believes there is any reason for bringing charges, it is his absolute duty to consider bringing them. That can't be malice.

Mr. Gremillion: If Your Honor please, that is the very point I am trying to prove. This man as District Attorney knows what racketeering and racketeering influences mean. He knows that if any Judge has committed any wrong, he knows there are other remedies. The mere fact that he didn't take that procedure and chose to place it in the hands of the public—he went out of bounds in his com- [fol. 324] ments and chose to leave it that way. That is the nature of the State's case and the basis of our case, and I want to prove from this witness that he made certain comments regarding those influences. Now I am trying to be as fair about this as I can. I don't want to ask leading questions. I am trying my best to conduct my case, and, if you will let me ask this question, I will bring it out and give you a fair trial.

Mr. Organ: If the Court please, that the District Attorney considers bringing charges to the Grand Jury is patent in the law as his duty.

The Court: Of course, the District Attorney can file a Bill of Information. Malfeasance would be a misdemeanor, I believe. However, as I say, any statements that he might have made—I mean, you can make—I believe you made your objection general to this line of testimony, any statements that he might have made with reference to this par-

ticular defamatory statement—a general Bill of Information would be admissible. Now this is not for the record.

(Discussion off the record.)

The Court: Go ahead and answer the question.

Q. Mr. Dempsey, do you recall the question?

A. Yes, sir.

Q. Would you please answer it.

A. Yes, sir. I asked him about the racketeering in-
[fol. 325] fluences, just what he meant by that, and his response was that he didn't mean that the Judges themselves were tied up with racketeers or that the racketeers influenced them in their conduct of their office, but rather that—using the example of a person who might be a friend of a Deputy Sheriff, who might be a friend of a court attache, who then might get a favor from the Court, and that could be explained as racketeering influence, although it is very indirect and very far afield.

Q. That was his remark to you?

A. Yes, sir.

Q. Now did he tell you that he was anticipating bringing these charges of racketeering influences against the Judges before the Grand Jury?

A. Yes, sir.

Mr. Gremillion: No further questions.

Cross examination.

By Mr. Organ:

Q. How long have you been covering the Criminal Court, Mr. Dempsey?

A. Close to 14 years.

Q. You are very familiar with all of the Judges here—

A. Yes, sir.

Q. —as well as the District Attorney?

[fol. 326] A. Yes, sir.

Q. How much time during the day do you spend over here on an average?

A. Each day from 6:00 a.m. until 2:30 p.m., sometimes after 2:30.

Q. Now, is it a fair statement that very, very frequently the Courts will be finished with their courtroom work by noon?

A. Yes, sir, very frequent.

Q. Is it also a fair statement that they hold no trials in Section "E"—that is Judge Bernard Cocke's court—on Friday?

A. That is correct.

Q. Now, when was the last time that you saw a trial being conducted in Section "B," that is, Judge George Platt's section?

A. I can't recall whether it was the Captain Clark—the former Night Supervisor of Police—or whether it was the Mayerhafer case, but it was one or the other, whichever came last.

Q. About how long ago was the latest of those cases?

A. I would say about four or five years ago.

Q. Now, Mr. Dempsey, were you in the witness box—

A. May I explain that last answer please about—

[fol. 327] Q. Oh, sure.

A. —Section "B"? Let me say this, that I have seen in chambers, of course, the business of the court being conducted, pleas being accepted by the state, perhaps lesser pleas or perhaps guilty as charged. In fairness to Judge Platt, now, I don't mean to infer that the last time there was a case in his court was four or five years ago. That was when there was a jury trial. Now, there may have been some lesser trials since then, which I did not cover. I mean, I want to be completely fair to the Judge in this case.

Q. Well, so do we, Mr. Dempsey.

A. Certainly. That is why I knew you would appreciate that explanation.

Q. When is the last time you remember a trial actually being conducted in the courtroom itself?

A. Once again now, in complete fairness—I don't cover every trial in every court in this building, as you can appreciate—I couldn't possibly do it—so there may very well have been trials in Judge Platt's court that I haven't

covered, but the one that I covered in his section of court with a jury was about four or five years ago, to the best of my recollection.

Q. At the very least? It is most unusual when there is a trial being conducted in Section "B," is that not so? [fol. 328] A. I would say so, yes.

Q. All right. Now, this business that is conducted in the chambers, those are not trials? Those are pleas, those are informal proceedings, are they not?

A. Yes, sir, but it is Court's business right on.

Q. Yes, but they are not trials?

A. Trials in the sense of jury trials, no, sir.

Q. Are those guilty pleas where—

A. Yes, sir.

Q. —they are not receiving evidence?

A. Not receiving evidence, no, sir. They are receiving sentences or—

Q. Now, were you in Section "E," specifically sitting in the witness box, on a recent day when the presiding Judge, Judge Bernard Cocke, told an attorney—Mr. Lyall Shiell, I believe—substantially that, "I will not try cases on Friday for you, the District Attorney, or anyone else, because it inconveniences me"?

A. His exact words were, "I am not going to be pressured by the District Attorney to hold Court on Friday, the District Attorney or anyone else," yes, sir.

Q. Did he say that it inconvenienced him?

A. No, sir, I really don't remember that he used the word "inconvenienced." He may have now. I am trying to be abundantly fair here, but I just don't remember the [fol. 329] word "inconvenienced." I do remember him saying in response to the situation—the way it came up, I was in Court on another matter, and the only reason it wasn't reported as such in the paper, the Judge's comment, was because the Judge's comments were in response to a second matter, if you please. There were two matters before the Court. Mr. Shiell, who was the attorney in both matters, had interrupted one to plead another client in a second case, and he asked that the matter lay over until Friday, and that brought the response from Judge Cocke that he

was not going to be pressured by the District Attorney or anyone else—if I remember his exact words—to hold Court on Friday. I don't remember the word "inconvenienced." However, I really don't—it could possibly have been said, but I don't remember that.

Q. He may very well have said, " . . . because it inconveniences me"?

A. If he did, I didn't hear it or I don't remember it.

Q. You didn't report that in your paper, did you?

A. No, sir, I didn't, because of the—I was on deadline for the case which I was reporting, the more important of the two, and in order to get the Judge's remarks and keep them in their proper context and their proper importance, I would have had to get the name, age and address of the [fol. 330] person in the case to which he was referring—do you follow me?—the second case. I would have had to stop and get all of that, and I couldn't interrupt the Court to get the court record in that case. However, I had my material from the case which—I was sitting in the jury box just opposite the witness bench—I had my material on that particular case, so I left the courtroom shortly after those words were uttered by the Judge, and I reported the particular case in question. I intended to come back and get the Judge's remarks plus the case, the second case.

Q. You are very friendly with Judge Cocke, aren't you, Mr. Dempsey?

A. I think I am friendly with all the Judges, yes, sir.

Q. But you are particularly friendly with Judge Cocke? You spend a lot of time in his court and in his chambers with him?

A. I wouldn't say a lot of time. I spend time in the Judge's chambers, yes, sir, and I spend time in Judge O'Hara's chambers, Judge Wimberly's chambers—

Q. Now you know, do you not, that Lyall Shiell has no connection with the District Attorney's Office?

A. That is correct.

Q. There was no one from the District Attorney's Office that asked the Judge to set that case on Friday. Isn't that [fol. 331] correct?

A. That is correct, but the remarks were made immediately after a heated controversy between the Judge and

the Assistant District Attorney in Section "E," Mr. Steve Plotkin.

Q. Mr. Plotkin had asked the Court to set that case on Friday?

A. No, sir.

Q. Mr. Shiell?

A. Yes, sir.

Q. The Defense Attorney asked that it be set on Friday?

A. Yes, sir.

Q. And the Judge refused?

A. Yes, sir. I think it was for the edification of the Assistant District Attorney honestly that the remarks were made, though it was for the entire court. He said it from the bench.

Q. You think that the Judge was taking a crack at the Assistant District Attorney then?

A. I wouldn't say he was taking a crack at him, as you put it. I would say that the issue of his working on Friday was certainly one of the moment. It was the source of remarks made by the District Attorney in several public utterances, and I think the Judge may have used that [fol. 332] particular time as being propitious to stress that he wasn't going to be pressured into coming down. Those are the words that I remember: "The District Attorney is not going to pressure me into coming down here on Friday," because the Judge doesn't come down on Friday for a reason. He goes to the law library.

Q. Tell us what was said, Mr. Dempsey, not what you think please.

A. All right.

Q. It is very frequent that that Judge—

Mr. Gremillion: Just a minute, if Your Honor please. I want to say this. Pardon me for breaking in, but, if he knows that as a fact, he can certainly testify to it and it is responsive to his question.

Mr. Organ: His opinions on why a Court sits or does not sit on Friday I don't think have anything—

The Court: He can't express it as a matter of opinion, but, if he knows it as a matter of fact, it wouldn't be a matter of opinion.

The Witness: I think I know it as a matter of fact, Your Honor.

The Court: All right. Put it in.

Mr. Organ: If the Court please, then I think that is something to be brought out by them on redirect.

The Court: He is on cross-examination. He can complete [fol. 333] his statement on that. Go ahead, Mr. Dempsey.

Mr. Organ: All right.

Q. Now, Mr. Dempsey, tell us—remember, you are here to be impartial, like you said a few minutes ago—

A. That is correct, that is correct. I have no desire to be otherwise.

The Court: Go ahead and state it.

A. (Continuing) I have been out here, as I said before, 14 years. I have seen Judge Cocke try cases on Friday. As a matter of fact, I have sat in his Court when cases have started on Wednesday and lasted through Friday, but, as a general rule, Judge Cocke always held Friday open to go to the Supreme Court to the law library to do research, to write his per curiams, to do his court work that he does not get the opportunity to do, and also to give the Assistant District Attorney—in previous administrations the Assistant District Attorney in that particular section took Friday in which to prepare his dockets for the coming week, to prepare his cases, to interview witnesses, and the like. That is true, Mr. Organ.

Q. Now, getting back to what you said a few moments ago, you said Judge Cocke took that opportunity to answer the District Attorney's Office from the bench?

A. Yes, sir.

Q. He does that quite frequently, doesn't he? In other [fol. 334] words, he blasts the District Attorney's Office from the bench, does he not?

A. What do you mean by "blasts" now?

Q. It is reported in your—what newspaper are you with?

A. The States-Item.

Q. Isn't it reported very frequently about Judge Cocke's blasting?

A. Whatever he does, I report—if it is newsworthy enough to report, I report it.

Q. And he does it very frequently?

A. I don't know what you mean by "very frequently." Now I am not trying to argue the point. Please believe me. I don't want to say "frequently." If you mean three times a week or five times a week—I don't know what you mean. I am not trying to argue the point.

Q. Compared to the other Judges.

A. More so than the other Judges, yes, sir, that is true.

Q. And in addition to that, you have sat in his chambers many, many times, haven't you, and heard him use very vituperative language about the District Attorney, the Defendant in this case, have you not?

A. Yes, sir, and by the same token. I have sat in Mr. Garrison's office and heard him blast the Judges, so it is a [fol. 335] sort of a tie, it's a stand-off.

Q. So you would say then that this is a running fight between the Judges and the District Attorney? Is that your testimony?

A. You said "fight"?

Q. Well, whatever you want to call it?

A. You are asking me my opinion now?

Q. Well, I am just asking for your testimony. You know the facts. In other words, you said that you were going to give us impartial facts.

A. That is correct, and I hope to do that.

Q. Good.

A. You said that I have been in chambers and heard the Judges blast the D.A. I have been in the D.A.'s office and I have heard the D.A. blast the Judges by the same token, so, if blasting each other constitutes a fight, I guess we have got a pretty good fight going, yes, sir.

Q. And this was going on, and all of a sudden one day the District Attorney was charged with defamation?

A. As this was going on, one day—

Q. Well, during the course of these exchanges—

A. Yes, sir.

Q. During the course of these exchanges, then one day the District Attorney was charged?

A. Yes, sir.

[fol. 336] Q. Now isn't it a fact that there are many, many statements made by Judge Cocke blasting the District Attorney's Office that you did not report to your newspaper?

A. Mr. Organ, I don't report things that are given to me in confidence. I don't violate the sanctity of a man's chambers, and I think that it is well established that when a Judge tells you something in chambers, you don't report it unless you ask permission and the Judge gives you the right to report it. Now, I would be a pretty poor reporter if I was to report and break a confidence, and I wouldn't last long around a building like this.

Mr. Organ: That is all the questions of this witness, if the Court please. No, I have another one:

Q. Mr. Dempsey, do you recall a statement by Judge Cocke in August that the District Attorney was *persona non grata* to him?

A. I read such a remark, yes, sir, in the papers. It was reported at another building. I remember the remark. I remember the quote.

Q. That was in August of 1962?

A. I think it was, Mr. Organ. It was at the pardon board session and it was reported by another reporter, but I recall having read it, yes, sir.

Q. And it was recorded in your newspaper that Judge Cocke said the District Attorney was *persona non grata* [fol. 337] to him because he had put an undercover man in Parish Prison and caught Peter Hand in the act of soliciting bonds without a license? Isn't that correct?

A. Now once again I am not arguing the point but the story will speak for itself, because I really don't remember the exact—

Mr. Gremillion: Object to that. That is obviously hearsay.

Mr. Organ: All right. I will withdraw it.

Q. Do you know anything about what Judge Cocke said about a letter that Mr. Garrison wrote the Pardon Board asking them to return certain bond money to the United Bonding Company?

A. No, sir, I don't.

Q. You don't know anything about that?
A. No, sir.

Mr. Organ: All right. No further questions.
Mr. Gremillion: Are you finished with the witness?
Mr. Organ: Yes, sir.
Mr. Gremillion: That is all.

(Witness excused.)

Mr. Gremillion: The State calls Jack Kneece.

JACK KNEECE, a witness called by and on behalf of the State of Louisiana, having been first duly sworn, was ex-[fol. 338] amined and testified as follows:

Direct examination.

By Mr. Gremillion:

Q. What is your name?
A. Jack Kneece.
Q. How do you spell that?
A. K-n-e-e-c-e.
Q. Where do you live?
A. 824 Bourbon Street.
Q. New Orleans?
A. Yes.
Q. Who do you work for?
A. Times-Picayune.
Q. What are your duties?
A. I am a General Assignment Reporter.
Q. Did you cover a meeting of the Press Association in the International Trade Mart Building on Saturday night, January 12, 1963?
A. Yes, sir.
Q. Did the Defendant in this case, Mr. Jim Garrison, make a talk to that group?
A. Yes, he did.
Q. Do you know Mr. Garrison?
A. Not as a friend, but I am acquainted with him.

Q. Well, do you know him when you see him?

[fol. 339] A. Yes, sir.

Q. Can you point him out in the courtroom?

A. (Indicating) He is the gentleman with the dark blue suit and the striped tie.

Q. Is that the same gentleman who made a talk to the Press Club?

A. Yes, sir.

Q. How long did he talk?

A. About 15 to 20 minutes.

Q. What was his manner of talking?

A. Well, he seemed to be in a pretty light-hearted mood, I mean, you know, sort of a joking mood. He wasn't in dead earnest or very serious.

Q. Well, was he speaking ridiculous?

A. No, he wasn't speaking ridiculous, but it was more of an informal talk than some that I had heard him make in the past.

Q. Would you say he was serious?

A. I would say he was serious part of the time but not all of the time.

Q. How many people were at this gathering, approximately?

A. Probably from 150 to 200, I would say.

Q. Now, did Mr. Garrison say anything about this case?

[fol. 340] Mr. Organ: If the Court please, I am going to object to that. The witness has testified that he considered part of it serious and part of it joking, and, unless he said something of a serious nature about the case, I don't think it is admissible, if he said something was a joke.

The Court: That is argumentative. It would go more to the weight attached to the evidence rather than to the admissibility.

Mr. Gremillion: Your Honor, I would like to say this—

The Court: I have already ruled on it.

Mr. Gremillion: Thank you.

Q. Now, what type of people attended this meeting?

A. I would say most of them were Press Club members and members of the press—people from around the state and a few attorneys and—let's see—just a scattering; just

a sort of a cross-section of business people who also hold membership in the Press Club.

Q. Now, what did Mr. Garrison say about the charges that he made against the Judges at this gathering?

A. Well, he went over much of the same ground that he had in other talks before.

Q. Did he reiterate any of the remarks that—

A. Yes, he did.

Q. What did he say?

[fol. 341] A. He said—he mentioned the same thing—that it couldn't help but raise the question of racketeering influence.

Q. What couldn't help but raise the question of racketeering influence?

A. The fact that his operating funds were cut off at sort of a crucial moment in his investigation of French Quarter activity.

Q. Now, was he serious then or in a light vein?

A. I think he was serious at that time.

Q. Did he say anything else about this case?

A. Yes, he said—in what I interpreted as a joking mood, he said that even a bookie wouldn't take odds on the fact that he would be convicted.

Mr. Organ: If Your Honor please, I am going to move that that be stricken. That was obviously put into the record to prejudice the Defendant and has no real—certainly it doesn't show any maliciousness in any way, shape or form. I move the question and answer be stricken from the record.

The Court: What is the purpose of introducing it?

Mr. Gremillion: The purpose of introducing it is that we have said in the Bill of Information it subjected the Judges to ridicule. Here was a very important gathering of Press Club members and he could in a light vein show ridicule and contempt for this particular Court, talking [fol. 342] about the Criminal District Court, and that that was the reason some of his statements were in a light vein and some of them were in a serious vein.

The Court: Well, at this time, whether it was said in a jocular mood or whether it was said in a serious vein, it

would be a statement by him and perhaps more importance would be attached to it were it in a serious vein than would be attached to it if it were in a jocular mood, but at the same time it would go to the weight to be given to the statement rather than its admissibility.

Mr. Organ: Your Honor, do I understand my motion to strike from the record is sustained?

The Court: No, it is overruled.

Q. Now, did Mr. Garrison make any other statements about the Judges on this occasion, at that time?

A. Yes, he said he was pretty certain that he would be convicted but he expressed the opinion that it would probably be reversed by a higher court.

Q. Did he mention the higher court?

A. No. I think he was pretty general. I think he said it would be taken to the highest court that would be necessary to get a reversal.

Mr. Organ: If Your Honor please, I am going to make the same objection. I presume the ruling is going to be the same, and I would like to reserve a bill of exception. [fol. 343] I respectfully reserve Bill of Exception No. 9 to the Court's ruling denying our motion to strike this evidence, and I will ask that the Bill of Exception include the question, the answer, our objection to it, the Court's ruling, all of the evidence in the case, and the entire record.

Mr. Gremillion: We have no further questions.

Mr. Organ: I have no questions.

Mr. Gremillion: You are excused. Call Mrs. Walter Shean.

The Court: With reference to the last statement to which he reserved a Bill of Exception, that evidence was refused to be stricken from the record for the reason it was found to be introduced under the general ruling that the statement he made with reference to this case was admissible only for the purpose of showing malice, and the evidence is restricted to that and to that alone.

[fol. 344] Thereupon, THERESA E. SHEAN, a witness called by and on behalf of the State of Louisiana, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Gremillion:

Q. Mrs. Shean, what is your name?
A. Theresa E. Shean.
Q. Where do you live?
A. 5225 Conti Street, C-o-n-t-i.
Q. That is here in New Orleans?
A. Yes.
Q. Where are you employed?
A. I am employed as the official court reporter in Section D, Judge Thomas M. Brahney's court.
Q. How long have you been so employed?
A. Since April of 1958.
Q. Were you present at a meeting sometime shortly after these charges were filed in which Mr. Garrison spoke?
A. Yes, sir.
Q. Where was that meeting?
A. That was at the St. Anthony auditorium which is my parish.
[fol. 345] Q. Do you recall the date?
A. Yes, December 5, 1962.
Q. How did you happen to go there?
A. I was invited, my husband and I were invited through a little notice that was in the Church bulletin on the Sunday previous to December 5, 1962.
Q. Do you belong to that Parish?
A. Yes, I do. I go to church there every Sunday.
Q. And this was a church meeting, as I understand?
A. Yes. Well, it was a meeting for the general members of the Church in the auditorium of St. Anthony.
Q. Was it announced when you read this bulletin, was it announced that Mr. Garrison would speak?
A. Yes, it was. It was a special notice in the Sunday bulletin announcing this meeting.
Q. You know Mr. Garrison, of course?

A. Yes, I do.
Q. Can you point him out?
A. Yes, right there. (Indicating)
Q. Mrs. Shean, did you hear Mr. Garrison talk?
A. Yes, I did.
Q. Did you hear questions and answers?
A. Yes, I did.
[fol. 346] Q. After he talked?
A. Yes.
Q. Did you transcribe, did you make shorthand notes and transcribe those notes?
A. Yes, I did.
Q. In their entirety?
A. Yes.
Q. Do you have them with you?
A. Yes, I do.
Q. May I see them?
A. Yes, sir. This is a speech. (Producing papers) and this is the answers and questions.

Mr. Organ: If your Honor please, if we may have a couple of minutes to read this, we might stipulate and save some time. If the Court please we will stipulate the statement is substantially—we have no—

Mr. Gremillion: I understand that you stipulate that these are the remarks that he made.

Mr. Trent: Substantially.

Mr. Organ: Yes. Of course, he can't read word for word what he said but substantially.

Mr. Gremillion: Sorry, I am going to qualify the witness because she took it down word for word and she has got her notes.

Mr. Organ: We will stipulate.

[fol. 347] Mr. Gremillion: In connection with the witness's testimony and the stipulation by the Defense, we will ask that this be marked "State's Exhibit Number Three." Would you please read this?

The Witness: Read it all?

Mr. Gremillion: Judge, I have no way of informing the Court of it unless we read it.

The Court: It is an exhibit. Of course, I have a right to read it myself.

Mr. Gremillion: Oh, yes.

Mr. Organ: No question.

Mr. Gremillion: I have no further questions, your Honor.

The Witness: That is all?

Mr. Gremillion: Thank you, ma'am. Your Honor while you are looking at that, could I speak to Defense counsel just a minute?

The Court: Yes.

Mr. Organ: If the Court please, since this is a public hearing, I am going to move that this statement be read in its entirety at this time and either Mr. Gremillion or Mr. Garrison or myself or anyone could read it but I think it should be read.

The Court: Any objection on the part of the Plaintiff? [fol. 348] Mr. Gremillion: I have no objection to the reading of it at all.

The Court: When the State asked for it a moment ago. If you both want to read it—I don't think the public is particularly interested, but if you want to read it, we will read it. Do you want to read it?

Mr. Organ: Ask Mr. Garrison. He may be able to read the statement.

The Court: No.

Mr. Gremillion: It is my exhibit. If it is going to be read I would like for somebody from my side to read it.

Mr. Organ: All right.

The Court: Just have the record show here this is read by agreement of counsel for the State and the Defendant.

Mr. Jackson: This is the text of the State's "Exhibit Number Three:"

STATE'S EXHIBIT No. 3

Transcription of shorthand notes taken at the meeting held at St. Anthony's Auditorium on Wednesday, December 5, 1962 by Theresa E. Shean.

Ladies and Gentlemen, let me say first that I am pleased to be able to come speak before this particular group. I didn't know there would be so many people but while I [fol. 349] don't have a prepared talk, what I want to talk on is something close to me so the more people who hear

it, the better. I understand that the last speaker you had was Hap Glaudi who has a program that says, "I speak as I please." Because that is my problem, I want to say a few words about freedom of speech—a matter of interest to me these days.

As you know, I have been charged with criminal defamation for criticizing some government officials and it is an interesting thing. In history, the victim, the complainant, is always some government official; whether an official in East Germany or where, some government official has been wounded and feels that the state has been put in its greatest danger and the only thing, if it is a serious matter, something that's even more serious is the habit of charging people with a crime who dare to criticize or speak freely. Of course we accept the fact that freedom of speech is a fundamental right in this country. We have memorized something out of history so that we can recall that freedom of speech, as well as freedom of the press, is one of the guardians that the first amendment provides.

[fol. 350] I want to tell you that it will not be protected unless people keep fighting for it. It takes individual human beings. Every now and then we forget about these rights and they begin to disappear. The moment we do forget, we don't have them. A good example is that the Russian people were guaranteed freedom of speech in the Constitution of 1924 and the only difficulty is, who has it and what does it require. They don't have jury trials in Russia so, consequently, when a person criticizes a public official in Russia, they call it defamation and if they protest it, if they call it freedom of speech, he is wasting his time because he is talking to the person he offended. There is no jury to talk to. This first amendment becomes increasingly clear to me. Why this is the first amendment and not the third, I don't know. The reason freedom of speech and of the press is the first amendment is because, if you can close the door on these freedoms, you close the door on all the other freedoms. If you can prevent people from criticizing and telling the truth, then all of the other freedoms become lost, because you can stop anything else. You can stop jury trials or they can come into your homes—

[fol. 351] and who is to print it if there is no freedom of

the press. If an individual criticizes the government they give an unfair trial to the person and the government can stop this individual. Then, the fair trials will disappear. This is the most important Constitutional amendment. I think it is unfortunate in this particular case. I would say that my criticism about the judges was something that anyone of you has a right to say. Anyone has a right to criticize, not only the judges, but me. He has a right to criticize the President of the United States. If anyone criticizes me in my office, I will not charge them.

Furthermore, there were criticisms that lawyers should make but rarely do because, for some reason, these lawyers seem to have lost their concern as guardians of our Bill of Rights. There was a time when lawyers came forth fighting for the Bill of Rights but now they are hard to find. I find, to my surprise, that the general run of people in different provinces seem more concerned about the new automobiles in New Orleans. There is a disappearance of the Constitutional guarantee of freedom of speech. What I said, I again say and as District Attorney, it was my [fol. 352] duty. It pointed out that these courts are not working as they should. Especially, since the Parish Prison is over-crowded. I pointed out that these holidays on Fridays, which has been the custom, just can't continue with the Parish Prison crowded as it is. The two and one-half months vacation are not reasonable. In all fairness, it can be said that these judges did not invent this system. They inherited it. But this is the time to go into a fulltime operation and have the jury trials. The summer vacation of two and one-half months originated in 1921 because the courtrooms were so hot without the appliances we have today but now they have air-conditioning in the Courtrooms but, unfortunately, the courtrooms are empty and the Parish Prison is jammed all summer long where it is hot. I feel I would not be doing my duty if I did not point it out in positive terms. Whether it is good taste or not is irrelevant. The point is that the Parish Prison is crowded and they have too many holidays. Although these judges didn't invent this system I think they should live up to the Constitution. The average courtroom has approximately

seventy or seventy-five jury days a year and since we have [fol. 353] so many awaiting jury trials, my thought is that it might be possible to increase these jury days.

The other point is that there is nothing complicated about the fines and fees expenditures, although if you read a long list of expenditures it can look any way you want it to. In that regard, this is not tax money. We have reduced our budget from the City voluntarily. We sent money back to the city. Fines and fees comes from the bonding companies and this is what we have improved our office with. Secondly, this money has to be spent by December 31st or we have to give some of it to the city. So, we have gotten $60,000.00 and I conclude that this is the time to get the equipment that we need, and that's what we have been doing. So, if you hear anybody say that we are throwing money away, this is not true. This has to be spent. The law encourages the District Attorney to spend it so it won't be built up. We have about $40,000.00 and what we don't spend, will have to be given away. It's a practical matter. And my hands are still tied. We were conducting a real aggressive operation against B-drinking in New Orleans and this is much more vicious than it appears to be. It [fol. 354] isn't just a matter of a few drinks. It's a full-fledged prostitution. It's nothing less. For some reason it has flourished over the years, but nothing ever happens. We have a police raid now and then and the vice squad strikes but the place continues. The visitors come down here and their wallets disappear and nobody does anything about it. I decided it is time to do something about it because I am going to enforce every law. As I pointed out to you, I was elected by the people of New Orleans. I am trying to give the District Attorney's Office a good job. In doing that we began closing some of these joints by harassing them. Whenever we see B-drinking violations, we would hit them again and again. It was at this time that the judges began to send their messages, no more money. I don't care what you saw in the newspaper today, they sent them in no uncertain terms. That's when the beginning of this conflict came—when our investigations were stopped, and stopped they were by the judges. Any-

way, I pointed that out. I said that when, in the midst of an operation, the judges cut off my funds, it raises interesting questions about racketeering influence. If you can think [fol. 355] of any other question it raises, I would like to know. It doesn't raise the question that this joint used to be in the same place or that they are the same owner. It doesn't raise any question that they are trying to help the District Attorney. I don't know exactly what the answer may be but I do know that when any public official tries to prevent a District Attorney from doing his duty, somewhere questions are raised. So, I told the people what was going on, so when I did that, I committed that criminal act. So you see not only a District Attorney, but a criminal. I think they charged me with the wrong thing. They should have charged me with treason. I publicly protested about the system and you are not supposed to do that because it has always been that way. You are not supposed to point out to the people that there are too many holidays. You are not supposed to point out that your investigations have been stopped. This is treason. Not too many centuries ago we would have had a trial on treason and they could have chopped off my head. Criminal defamation is all right for me but it is treason. The Bill of Rights is being violated because any citizen has a right to point out the logical question when the District Attorney has his money [fol. 356] cut off by other public officials without any precedent. Never before in the Criminal District Court have any judges shown the slightest interest in what the District Attorney spends. There was never any interest at all. Now, they have become very conscious of it and examine it so closely that when we bought four automobiles and managed to get them under the wholesale price, they want more evidence. We got these automobiles under wholesale price and now this concern by the judges of the expenditures has never before been questioned in the slightest degree until the first B-drinking joint began to cave in. I don't care what reasons they give. Several, I understand, don't like the color of my rug. The point is what did they do. They stopped the investigations when they were really rolling. That is the fact that remains. Two things have

happened since we have been there. The District Attorney has started the most successful investigations in history and the other thing is that the judges cut off funds when it was well under way. I went to a bank and borrowed money, $5,000.00, and we kept it going because I wasn't going to get any money. I put that in my account because the judges [fol. 357] have no supervisory control over me. They don't have any and there won't be any one of them that will control this District Attorney's office for the next three and one-half years. Of course I imagine that's one of the things they would like to do. We borrowed the money and continued with our work and, as a result, they are all gone off Canal Street and they won't return for three and one-half years. The B-drinking on Bourbon Street is no different. It's a violation of the law and we are going to eliminate it. I don't care if we know who owns it or not, if they violate the law systematically, we are going to stop it but the amazing thing is that anyone seeking to do his duty to the letter to have so much trouble with the people. Actually, we have had very little trouble with criminals but many of the people were supposed to be on our side have been a thorn in our sides and they have done much more harm and all we are trying to do is set out to stop these violations and we are going to but, in the course of doing this, I find I am now a defendant in the Criminal District Court. As an interesting parallel, not too long ago the Crime Commission started an investigation and [fol. 358] one man ended up in jail and that was the crime commissioner. New Orleans is a very strange city so, here I am, while the fellows in the Parish Prison jammed up together will be there many months. At least, I am going to have a speedy trial. This defamation charge is obviously a violation of freedom of speech. We can trace back the origin of the right to speak freely to the Greek cities, particularly, in Athens where democracy had its origin. That's where Socrates exercised his right to speak freely but, of course, he was put to death for speaking it freely. Later on, in Rome, if you were an important man, you had so much freedom of speech but when the Middle Ages came along it disappeared and the first real positive signs

when it returned was when King John signed the Magna Carta. It did assure the Baron (?) some of their rights, which, in recent years at best could be recognized and in order to be sure those rights would be recognized, Parliament began. Parliament is literally the beginning of the source of free speech. Now, an interesting thing is in England where the right to free speech was so strongly recognized where it was involved that if the King did get [fol. 359] charged with defamation, he had a right to get a jury trial.

You will note that I filed a motion for a jury trial. I don't think I will get it but I would like to have it. As a matter of fact, if the English Courts wanted to try a man for contempt, he had to be given a jury trial and the theory was that the defamation was committed against the judge or the government, so you see this concept came over here. For instance, in 1621 there was a provision that any person had a right to speak his mind and in 1776 the Pennsylvania Constitution incorporated a version that every citizen has a right of free speech. Now, the interesting thing was, in early America, even as early as 1735, there was such consciousness to criticize the government, that in order to punish a person for contempt, you had to have a jury trial and if a person was going to be tried for criticizing a judge or a court, you could not have a judge try it. In the case of Peter Zenger, they had to give him a jury trial and the judge instructed the jury to find him guilty but the jury ignored him and acquitted him. When you have a judge or a summary trial where the verdict is involved, those rights are in jeopardy. Anyway, that's very briefly, the [fol. 360] freedom of speech concept. There were times right after, or before, the revolution when the people of this country were very conscious of it and there are other times when it almost disappears. Perhaps it's a result of prosperity but it occurs to me that this right has temporarily disappeared and I wonder if King George was born two hundred years later and they could have held on to the colonies—

Recently, many lawyers have said to me, what you said was absolutely right but you should not have said it. Other friends said there are things to be said on both sides. One

intelligent person said, in human relationship there is something to be said on both sides. I said, do you mean that if someone holds up a bank, there is something to be said on both sides? There are people who tend to say this when a situation like this is involved. If somebody came into my house and took a television set, should I say there is something to be said on both sides? What I said was not only right but I had to say it. I will continue saying what I think was the truth. I will not be stopped. What I said was, essentially, true and they don't work enough. It is [fol. 361] true, questions of influence were used. I will be standing up and telling the people of New Orleans every time I encounter trouble like this from a public official. I have to because I have no organization to turn to. I have no allies because the other officials are the "association of armed robbers." They want to know how we got in. It's a new phenomenon but we don't worry about it. Sometimes, we feel that our office is an Alamo. The way I feel is if you can last four years doing your job—we won't last four years if the time has come when we can go to jail for standing up and making an honest criticism—then I insist on going. I don't care how much these people try to conceal the facts with half-truths and downright lies, I will keep on making investigations of the law as long as I have a dollar and, if I run out of money, I will borrow it, or I will get it from the citizens because I know that the citizens of New Orleans are tired of having organized B-drinking. I know the people of New Orleans want the law enforced to the letter of the law and the reason is because they elected me without an organization. I accept that and will enforce every law to the letter of the law. I don't [fol. 362] know what twists and turns this will take but I promise you this: until the last day I am in office, you are going to get the best District Attorney's office possible but, if we can last three and one-half years more, then you will have the best District Attorney's Office in the United States. I will never back down. I don't care if the judges wear black robes or purple robes or a crown. I run the District Attorney's Office and will make the people of New Orleans proud they elected me. I will not let any judge or any public official block me in any way.

Thank you very much.

The Court: Do you have another witness, Mr. Gremillion?

Mr. Gremillion: Yes, sir. Call Mr. Robert Kelso.

Robert Kelso, a witness called by and on behalf of the State of Louisiana, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Jackson:

Q. Would you state your name please, sir?

A. My name is Robert Kelso.

Q. Where do you live, Mr. Kelso?

[fol. 363] A. At 1124 Louisiana Avenue.

Q. In New Orleans, Louisiana?

A. Yes.

Q. What is your occupation?

A. I am a newspaper reporter.

Q. How long have you so been employed?

A. I have been employed for both New Orleans newspapers for a total of approximately 11 years.

Q. And who is your employer?

A. My employer is the Times-Picayune and I now work for the States-Item.

Q. And how long have you been working for the States-Item?

A. Approximately four years.

Q. And in the course of your occupation and duties concerned therewith, did you have occasion to interview Mr. Jim Garrison?

A. I did.

Q. Do you know Mr. Garrison?

A. Yes.

Q. How long have you known him?

A. I am not personally—that is to say, I am not a personal friend of Mr. Garrison's. I have met him on occasions in the line of business.

Q. Do you recognize him in the courtroom today?

[fol. 364] A. Yes.

Q. Will you point him out?

A. He is right over here. (Indicating)

Q. Do you bear any malice or ill will toward Mr. Garrison?

A. None whatsoever.

Q. Now did you have occasion to interview Mr. Garrison sometime previous to December 4 or during the month of November, 1962?

A. I did.

Q. Now where was that?

A. In Mr. Garrison's office here in the Criminal Courts Building.

Q. How many times during this period did you interview him?

A. On two successive days, probably about five hours altogether.

Q. Have you since that time had occasion to interview Mr. Garrison?

A. No. I covered a story in which he spoke at a luncheon club but I didn't talk to him personally.

Q. But, you were assigned and you covered certain news which—

A. I was.

Q. —which involved Mr. Garrison?

[fol. 365] A. Yes.

Q. And at those times and places, was Mr. Garrison present?

A. Yes, he was.

Q. And those were in the Parish of Orleans?

A. Yes.

Q. Now, all these interviews were pursued pursuant to your occupation?

A. That is correct.

Q. And who directed that you take these missions?

A. My city editor.

Q. Did you notify Mr. Garrison of the purpose of your call or presence at all of these interviews?

A. The original, the period you mentioned around December 4, I did, yes. The other one, it was a routine coverage of a luncheon speech about two weeks ago, a little less than two weeks ago.

Q. At that time you didn't have occasion to speak with him?

A. I did not.

Q. Well, at the first interview, I am talking about the one in November, at which time you said, I think, you were with him on two and a half days or two different occasions, is that right?

A. Two occasions on successive days, a couple or three [fol. 366] hours each time.

Q. I see. Now what were the questions that you asked during the course of this interview? Did you ask him any questions?

A. I did.

Mr. Organ: If your Honor please, I just would like to have your ruling that our objection to all of these are general as to the testimony of this witness and these statements so we do not have to continue to make our objection. This is only for the purpose of malice that this is being introduced?

The Court: That is right. It is allowed and restricted to the purpose of showing malice only.

Mr. Organ: And our Bill of Exception or objection applies to this like it does to all the other testimony?

The Court: Yes.

Q. Mr. Kelso, do you remember substantially what you asked Mr. Garrison?

A. Yes.

Q. Do you remember substantially in sum and substance what Mr. Garrison replied in his responses to your questions?

A. Yes.

Q. Now were these correctly reported, these responses, [fol. 367] the sum and substance correctly reported by you in four articles which appeared in the States-Item, in the newspaper?

A. They were.

Q. I would like for you to, if you would—

Mr. Gremillion: I hand to Counsel—

Mr. Organ: I will look at them.

Q. So I hand to you four separate newspaper groups which the State will mark for identification "Four," "Five," "Six" and "Seven" and ask you if you recognize these as containing these series of articles which you just testified about.

A. Yes. They are running backwards. Otherwise it would be.

Q. All right, let's put them in chronological order.

A. It starts on a Monday, Tuesday, rather.

Q. These appeared on successive days of this paper?

A. Yes.

Q. They appeared on December 4, 5, 6 and 7, is that correct?

A. Yes, that is correct.

Q. This is the second of the articles on Wednesday, December 5?

[fol. 368] A. Yes.

Mr. Jackson: All right, for the record, these particular exhibits have been marked for identification, the paper of December 4, State "Exhibit Four," December 5, State "Exhibit Five," December 6, State "Exhibit Six" and December 7, State "Exhibit Seven."

(Whereupon, the documents offered by Counsel were duly marked for identification as "Exhibit Four," "Exhibit Five," "Exhibit Six" and "Exhibit Seven.")

Q. Do these particular portions of the newspaper contain the articles which you wrote, a series of articles in four installments?

A. If they have the continuation they do, yes. In each case there is a jump. (Checking)

Q. Would you examine those to see if we have them?

A. All right. You don't have it here. We have it. Yes, all of the articles are here in these exhibits.

Q. Now, Mr. Kelso, I note in some of these articles there are some direct quotes. Are those quotes that are made in the articles the exact words of Mr. Garrison as he made to you?

A. Yes, they are.

[fol. 369] Mr. Jackson: Counsel now offers into evidence State "Exhibits Four, Five, Six and Seven."

The Court: Let them be received.

(Whereupon, the documents previously marked for identification as "Exhibits Four, Five, Six and Seven," were received in evidence.)

Q. Now during the course of these interviews, Mr. Kelso, did Mr. Garrison ever display to you or express to you that he was angry about the actions of the judges?

A. I only recall one instance which involved my asking him a question about the letter that had been given to me by one of the judges, or rather, a copy of the letter they had sent Mr. Garrison earlier. It involved some disbursements from the Fines and Fees Fund, expenditures they had approved and some they had not approved and mentioned some of their reasons for not approving the ones that were disapproved and it went on to criticize in general the way the investigative money was handed out without, as the judges saw it, any effort being made to recover the funds. However, that was extraneous to my purpose in being there so I only asked him about it, asked him about the letter in connection with the funds. He said he had gotten a letter but it had irritated him and he didn't recall that he finished reading it so he called for a copy and read it and then we [fol. 370] discussed what he said in the letter.

Q. Did he make any other remarks or observations at this time?

A. In connection with this letter?

Q. In connection with the letter or his being mad or irritated—

A. Not that I recall.

Q. —by the action of the judges?

A. I should say that I didn't ask him. I wasn't there to ask him about the dispute with the judges other than as it was reflected in expenditures for undercover money and other expenses that the judges had some control over.

Q. Did he ask you or assign any reason for having made public his criticism of the judges of November 2, 1962?

A. Yes, in a general way. He started off by giving an account, a sort of resume of what had taken place from the start of his administration. He said among other things that he had built up the Fines and Fees Fund by making greater collections from bonding companies for forfeited bonds and that he had started out with his investigative work using some of this money. So, he went through the history of the thing which I don't think we need to go into now and said that he had learned, as I recall, it was about [fol. 371] October 3, at an en banc session of the judges who had, incidentally, told him in mid-summer they wouldn't sign any more warrants on the Fund until the judges got back from the summer recess. They had told him that henceforth it would take the signatures of five of the Criminal Court Judges rather than just one judge before any of these expenditures from the Fines and Fees Fund could be approved. He also said that he and several of his assistants had been told that—I don't recall that he said the judges told them, but that was the implication, that the judges would not approve reimbursements to Mr. Garrison for any of the money he spent from his bank loan, which has already been mentioned in testimony or they would not reimburse him out of the Fines and Fees Fund for these outlays and he said something like it had become ap-

parent that he wasn't going to get his money and that he decided to carry it to the public.

Q. In other words, at that point it was a deadlock, that is, when he deliberately made public his criticism, that is what you—

A. That was the impression I got from what he said.

Mr. Organ: Just a minute, please. I would like my objection to be in the record. Now the witness has testified to what Mr. Garrison told him and now the Attorney [fol. 372] General is asking the witness to give his impression of what Mr. Garrison meant.

The Court: The objection is sustained.

Mr. Jackson: If your Honor please, I think the objection of the previous witness, the Defense asked the demeanor. This is going into demeanor and all to show anger and malice.

The Court: Mr. Jackson, you can ask him what statement he might have made and what Mr. Garrison might have said, but you can't just have a witness express a general opinion or an impression of what the import of the conversation might be. Therefore, the objection is sustained.

Q. Mr. Kelso, was that the reason that he assigned for criticizing the judges? What was it?

A. That was the reason he assigned for discussing this openly.

Q. Well, what did he say in that regard?

A. I don't recall. If I have a quotation in the thing there —it may be—I don't recall other than he said it was at this point when it appeared that he wouldn't be able to get his money and that they didn't intend to give it to him, that he decided to make a public complaint of the issue.

Q. Was that the reason he assigned for his criticism?

[fol. 373] A. Yes. I should say that we didn't discuss the business about vacations since I was there to find out about money.

Q. I see.

A. In that context, he told me that that was when he decided to make a public complaint about the difficulties in dealing with the judges.

Mr. Jackson: If Your Honor please, these next questions are directed to laying the proper foundation for the admission of a confession. I would like to make Defense Counsel aware of this. (Exhibiting document to Counsel)

Q. Mr. Kelso, did you cover a particular talk which was made by the District Attorney on January 12, 1963?

Mr. Organ: Well, Counsel, if you are going to give the document to me to look at, let me look at it. Don't grab it out of my hands before I am finished.

Mr. Jackson: Excuse me. I wanted to open it up for you (returning document to Counsel).

Q. Mr. Kelso, I show you a portion—

Mr. Organ: If Your Honor please, I would like to have an opportunity to read the document which the Attorney General has handed me.

Mr. Gremillion: We are not going to use that document (taking document from Counsel).

[fol. 374] Mr. Organ: I don't understand the reason for handing it to me then.

Mr. Gremillion: Because we decided to take it back.

Q. Mr. Kelso, did you have occasion to report a talk given by the District Attorney, which was made on Friday, January 11, 1963, that you previously referred to as having covered?

A. I feel sure that I did. Was it reported as having spoken at the Monteleone Hotel?

Q. That is correct.

A. I did.

Q. This particular article, was that reported in the Times-Picayune on January 12, 1963?

A. In the States-Item in the afternoon of the day the address was given. It may have also appeared in the Times-Picayune. I am not certain about that.

Q. What did Mr. Garrison say at that time?

Mr. Organ: If Your Honor please, now I am going to object, unless this witness testifies that he can recall all of the substantial portions of Mr. Garrison's remarks relating to this case.

Q. Could you so recall, Mr. Kelso, in substance?

A. Yes, I think so.

Q. Now would you tell the Court in substance, as best you can, verbatim, what Mr. Garrison said.

[fol. 375] A. Well, I should say that I can't recall everything he said about the thing, but I was taking notes, and the things that I regarded as specially pertinent I do recall; I don't recall the whole thing.

Mr. Organ: Then, if the Court please, we move that this testimony not be allowed, what this witness regarded as—

The Court: You might qualify him.

Mr. Gremillion: If Your Honor please—

Q. Mr. Kelso, I am not asking that you report his talk in its entirety. All I am asking you is to tell us what he said about the judges in this case. Now you said you could remember that. Now would you tell us that. Go ahead.

Mr. Organ: If Your Honor please, as I understand the testimony of the witness, it was that he couldn't recall all of it, and the State should not be allowed to produce portions of what Mr. Garrison said here in an attempt to show malice. He may have said something else in that talk that completely puts a different meaning on that. As a matter

of fact, our position is that that was improperly reported in the papers and that there was a trend—the entire tenor of the talk was wrongfully reported in the New Orleans States.

Mr. Gremillion: Your Honor, we are not introducing the article. We are only using that to show the time he heard [fol. 376] this man make the statements, and all we are trying to get is the statement he made about these judges, and the sole purpose for it is malice.

The Court: Let me ask this—

By the Court:

Q. Did I understand you to say that you remembered the substance of all that was said there?

A. Yes, in connection with this case, yes.

The Court: If he can remember the substance of it, that is all that is required under the law.

Mr. Organ: If the Court please, he just said he could remember what he thought was important at the time.

The Court: I believe—

The Witness: I can't give you verbatim—

Mr. Gremillion: It's in the notes.

Mr. Organ: Let's read the record. Let's have the record read back.

The Court: You can read it back if you want to. That will be all right.

Mr. Jackson: I think the witness also has an explanation for his answer which will clear up the objection made by opposing Counsel.

The Court: If the reporter can't find it—

Mr. Organ: I would like to have it read. This is a very competent reporter, and I would like to have it read and [fol. 377] like to have it made part of a bill, if we are going to be overruled on this.

The Court: Off the record.

(Discussion off the record.)

The Court: All right. Read it, please.

(Whereupon, the record was read back by the reporter, beginning at page 123, line 14, through page 126, line 4.)

The Court: Objection overruled.

Mr. Organ: To which ruling we will reserve Bill of Exception No. 11, and we ask that the question—all of the questions leading up to—all the testimony of this witness, the question of the Attorney General, our objection and the reason for the objection, and His Honor's ruling, and we ask that our previous bill of exception and our position as to this type of testimony be made a part of the bill of exception along with the record and all of the testimony.

By Mr. Jackson:

Q. You may answer.

The Court: In connection with the reservation of the Bill of Exception, the Court will state at this time that the witness has said he remembers substantially that which was said or remembers in substance that which was said, but [fol. 378] in response to a question by Counsel for the State, who asked him the question as to whether he can recall it verbatim, the witness said that he could not testify to exactly everything that was said, however, he remembers all of the substance, and, remembering the substance of the conversation, the Court thinks that the evidence is admissible. The Court will set forth in its per curiam to the bill of exception the legal reasons, for Bill of Exception No. 11.

What is the question now, Mr. Kelso?

The Witness: I have forgotten what it was.

Q. What did Mr. Garrison say in sum and substance at this meeting that you covered?

A. In sum and substance, in connection with the present case, he said these things—and he said these things more than once, because he is a rather eloquent speaker and oc-

casionally repeats his ideas in different forms: that there were some good judges in the Criminal District Court. He named Judge Shirley Wimberly by name, although I didn't report that, because he didn't mention other judges. But that the judges, whether they intended to or not, could hurt his office by acting in a bloc. And at another place in the speech he said that a number of my lawyer friends told me that what I said about the judges was true but that I shouldn't have said it. He also said that if he were [fol. 379] to make the criticisms that were involved in the charges against him, over again, he might word them differently, but he didn't know what wording would be better. He also said that, whatever the outcome was, he would never apologize for telling the people of New Orleans the truth. That was the statement that I put the lead of the story on. I think that is substantially all I recall about it.

By Mr. Gremillion:

Q. Now, Mr. Kelso, do you recall whether he said anything about some of the judges as against the other judges?

Mr. Organ: Object to the leading question, if the Court please.

The Court: Objection sustained. I think the question would be improper, Mr. Gremillion, as leading, and also the fact that it charges defamation of the law (?).

Mr. Gremillion: The State is taken by surprise by the remark of the witness, and I want to ask this particular question:

Q. Did you report in your story that statement, that Mr. Garrison said the statement he made did not apply to every judge in the Criminal Court? Do you recall that?

Mr. Organ: If the Court please, the witness just testified to that.

[fol. 380] The Court: He has testified to that. Mr. Gremillion, you couldn't be caught by surprise.

Mr. Gremillion: I didn't understand his answer.

The Court: If I understand his testimony, he said there were some good judges in the bunch, and I believe he named Judge Wimberly, but I don't think he went any further than that.

Mr. Gremillion: All right then. Fine. Let me just ask this question:

Q. Did he say anything else about the judges?

A. He said in connection with this voting as a bloc that the judges were under the leadership of the incredible Judge Bernard Cocke.

Q. Can you recall any other things he said about the Judges?

A. No, I don't believe so.

Mr. Gremillion: No further questions.

The Court: Court will stand in recess for fifteen minutes.

(Whereupon, a 15-minute recess was taken.)

[fol. 381] AFTER THE RECESS

Cross examination.

By Mr. Organ:

Q. Mr. Kelso, it is fair to state, is it not, that the impression that Mr. Garrison gave you was that the reason he brought these issues out to the public was because he no longer had any funds with which to continue his investigation?

A. Yes, it is.

Q. It is also fair to state that he did not give you the impression that he brought this out to the public solely because he had sustained a personal loss?

A. Yes, it is.

Q. Now, in your discussions with the Judges when you wrote your various—your series of articles there, did you discuss with them four automobiles that had been purchased by the District Attorney's Office?

A. The subject was brought up because it was one of the items on which payment had been withheld.

Q. Do you remember what kind of cars they were?

A. They were Chevrolets.

Q. Do you remember whether they were purchased at or near a wholesale price?

A. At that time, I only knew that they were purchased at what I thought was a very low price, something like [fol. 382] $1,748.00. As I recall, there were four separate items of $1,748.00.

Q. Now, did the Judges advise you that they had turned down payment of those items because they did not have a certified copy of the advertisement, the public advertisement?

A. Yes, they did.

Q. Had bids been let on that purchase?

A. The advertisement ran on three occasions in the Times-Picayune and also in the States-Item. That is all the knowledge I have of it.

Q. But your understanding was that they turned that down, they refused to authorize payment of those, solely because there was not a certified affidavit from the paper that it had been advertised?

A. They told me that the payment had been withheld because all that Mr. Dalton Williams, the Administrative Assistant District Attorney, who had been discussing a few of these matters with them, had presented them was a clipping, that it had just been cut out, the ad, which ran eight lines, and they said there was no way of telling what newspaper it was run in or when.

Mr. Organ: That is all the questions I have, Mr. Kelso. Thank you.

Mr. Gremillion: No further questions.

[fol. 383] (Witness excused.)

Mr. Gremillion: Call Mr. Bill Reed.

Bill Reed, a witness called by and on behalf of the State of Louisiana, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Gremillion:

Q. What is your name please, sir.

A. Bill Reed.

Q. Where do you work?

A. I work at WWL-TV.
Q. How long have you been employed there?
A. Approximately four and a half years.
Q. What is your job?
A. I am News Director.
Q. For that station?
A. Yes, sir.
Q. WWL-TV—is that a television station?
A. That is a television station, yes, sir.
Q. Mr. Reed, do you know Mr. Garrison?
A. Yes, quite well.
Q. Is he in the courtroom?
A. Yes, sir.
Q. Did you have occasion to interview Mr. Garrison on [fol. 384] November 3, 1962?
A. I don't believe it was November 3.
Q. On or about November 3?
A. I interviewed Mr. Garrison a number of times. I believe the date nearest that was probably November 2, which I recall was a Friday.
Q. Of course, I am talking about this case, because I understand you interviewed him on many occasions about other things.
A. Yes, sir.
Q. But I am speaking about this case now. Did you interview him on or about the very early part of November about this case?
A. Yes, sir.
Q. Where did this interview take place?
A. In his office here in the Criminal Courts Building.
Q. Now, did you interview him on another occasion concerning this case?
A. Yes, sir.
Q. Do you remember the date?
A. Yes. I interviewed him two or three times relating to this case. I believe it was later on, and I believe that one was also in his office. I think that would be maybe 10 or 12 days later.
[fol. 385] Q. Do you recall the date?
A. November 16.
Q. Now, how was this interview made? Tell the Court please.

A. Well, on television it is a little different than the newspaper. We ordinarily set up our sound cameras, sound movie cameras with film in them, and we then more or less start. The idea is to be as brief as possible as we don't have too much time on our newscasts in which to put these films on. Everything everybody says, the questions and answers, are recorded on sound film.

Q. Do you have the sound films of the substance of these interviews?

A. Yes, sir.

Q. Were they subpoenaed in this Court?

A. They were.

Q. Did you give them to me?

A. Yes.

Q. Is this them? (Exhibiting reels to witness)

A. Looks like them. Yes, sir, it is.

Q. Yes. They are the ones you just handed to me?

A. Yes, sir, that is correct.

Q. Now, I understand from your testimony that these films represent the sum and substance of your interview with Mr. Garrison concerning this case. Is that correct?

[fol. 386] A. Well, sir, some of those films are at least one of them is not an interview.

Q. What is it?

A. It is a portion of the speech that Mr. Garrison made.

Q. No, sir. I am not speaking about the talk at Kolb's Restaurant. I am only speaking about the film clips No. 3 and No. 4.

A. Yes, sir, that is correct.

Q. I mean, I am talking about the—I am not talking about anybody else's interviews—I am talking about the two you made, which you have identified as having been on or about November 2 and November 16.

A. Yes, sir.

Q. Now do these films represent in sum and substance Mr. Garrison's comments concerning this case?

A. Yes, sir.

Mr. Gremillion: If Your Honor please, I would like to bring a camera in and show these to the Court. Call Pan-American Film out there.

The Witness: Mr. Gremillion, we have a good sound film cameraman here in case you need any help setting them up.

Mr. Gremillion: We have a set here from—

Q. Let me ask you something else while we are waiting [fol. 387] for these. Have you reviewed these films?

A. Yes, sir.

Q. Who did you review them with?

A. You, sir.

Q. And these are the identical films that you have referred to in your testimony?

A. To the best of my knowledge.

The Court: Mr. Gremillion, in order to save the Court's time, couldn't he testify as to what is in those interviews, what made Mr. Garrison say it?

Mr. Gremillion: Well, we have notes of the films that I could use to let him refresh his memory. If there is no objection to it, I would be very glad to save that time.

The Court: Off the record.

(Discussion off the record.)

Mr. Organ: Now it is understood, if Your Honor please, that our objection to all statements before and after apply to all witnesses, our bill of exception applies to all witnesses?

The Court: That is right, and the same ruling, that this evidence is admissible for the purpose of malice and restricted to that question alone.

Q. Now, Mr. Reed, on the occasion of the first interview, which was November 2, I believe, what did Mr. Garrison tell you? I am talking about the conversation now that I [fol. 388] previously asked you about in his office, when you were questioning him with the microphone, and he answered you. What did he tell you?

A. This recording was made in response to a meeting of the eight Judges that day, in which they said that Mr. Garrison's earlier remarks had been intemperate. They also had some other things to say. So I went to Mr. Garrison's office to interview him on his reaction to the Judges' comments. I asked him whether the Bar Association—they

asked—the Judges had asked for an investigation by the Bar, various Bar Associations.

Q. All right.

A. In Mr. Garrison's remarks, I asked him whether the Bar Association—whether the possibility of an investigation bothered him, and he said no, that he was not bothered by this investigation at all.

Q. Did you ask him about the responsibility for assigning cases on the docket?

A. Yes. The Judges in their criticism of Mr. Garrison had pointed out that the District Attorney is the master of the docket, that he is the one who sets the cases.

Q. And what was Mr. Garrison's reply to that question?

A. I asked him whether he bore any responsibility for this, and he said that—now I am trying to recall his exact [fol. 389] comments—

Q. Did he say anything about being charitable?

A. Yes. I am not sure it was in connection with that though. Yes, he said, "To be charitable, I would call that a lie," referring to the Judges and their fixing the responsibility on him.

Q. Now, Mr. Reed, did you ask him if he intended to meet with the Judges about this matter?

A. I said that the Judges had pointed out that they thought it would have been much better had Mr. Garrison met with them, and I asked him what he thought about that, whether this was not so, and he said, "They know, I believe, perfectly well it would have been a waste of time, that the only way to get these sacred cows back to work is by public reaction." As I recall it, those were almost the exact words.

Q. Now, did you ask him anything about the Judges taking vacations?

A. No, I don't believe I asked him anything specifically about that. I believe that this came out in one of the answers to an earlier question. Again, I am not quite sure what that question was, but he went on to say—he said that the Judges should be investigated too for taking 206 days of vacation a year before the legal holidays. Further in his answer he went on to say that it was outrageous for the Judges to be receiving $18,000.00 a year and taking this

[fol. 390] many days off, that for every trial date, I believe, there were two vacation dates.

Q. Mr. Reed, did he refer to this practice that he described to you—did he refer to it as any type of device or anything like that? Did he call it anything, their activity?

A. Oh, oh, yes. He said—he called it a racket. "The only way to refer to it is as a racket," and that the only way that the public would find out about it was for him to bring it to public notice.

Mr. Gremillion: We tender the witness.

Mr. Organ: Did you submit the witness?

Mr. Gremillion: Yes, sir.

Mr. Organ: There was some noise, and I didn't understand you.

Cross examination.

By Mr. Organ:

Q. Was there anything about Mr. Garrison's demeanor on any of these occasions that indicated that he was antagonistic and had personal reasons for bringing this out, making these statements?

A. Well, no, sir. I didn't notice anything antagonistic about Mr. Garrison. I felt or he seemed to me to not be calm. He was interested, very definitely, in this situation, but I couldn't tell anything about his motives. He cer-[fol. 391] tainly didn't give me the appearance that he was being vindictive or anything else.

Q. Is it fair to state that his entire appearance on these occasions was of someone who felt that there was a public wrong that should be brought out?

A. No question about it, yes, sir.

Q. Is it fair to state that at no time did Mr. Garrison show any personal animosity toward the eight Criminal District Judges?

A. Not as far as I was concerned, no, sir.

Mr. Organ: No questions.

Redirect examination.

By Mr. Gremillion:

Q. Mr. Reed, did Mr. Garrison volunteer these statements to you?

A. Well, yes, sir. I asked him for the interview, and then his answers were in response to my questions after he had agreed to be interviewed.

Q. Did you promise him anything for making these answers?

A. No, sir. He didn't promise me anything either.

Q. Did you subsequently broadcast these remarks on your news program?

A. Yes, sir.

Mr. Gremillion: That is all.

[fol. 392] Mr. Organ: No questions.

(Witness excused.)

Mr. Gremillion: If Your Honor please, could we have just about two seconds to check a couple of things please?

The Court: I will give you five minutes. The Court will recess for five minutes.

(Whereupon, a brief recess was taken.)

After the Recess

The Court: Proceed.

Mr. Gremillion: We are ready. Call Mr. Rotman.

Bern Rotman, a witness called by and on behalf of the State of Louisiana, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Gremillion:

Q. What is your name?

A. Bern Rotman.

Q. Where are you employed?
A. WDSU-TV.
Q. Is that a television station?
A. That is correct.
Q. What are you employed as, sir?
A. Reporter.
[fol. 393] Q. What are your duties in that regard?
A. I cover stories, go out and look for news, find it, put it on the air.
Q. Do you know Mr. Garrison, District Attorney?
A. Yes, sir.
Q. Is he in the court?
A. He is.
Q. Would you point him out?
A. Yes, sir (indicating).
Q. Have you ever interviewed Mr. Garrison concerning this case?
A. Yes, sir.
Q. Do you recall the dates or the approximate dates?
A. Well, they ranged over a wide area, but I would think around—most often around the first of November or somewhere around there, 1962.
Q. Do you recall in sum and substance the remarks Mr. Garrison made to you concerning this case?
A. I believe so.
Q. On the first occasion that you interviewed him, would you tell us what he told you about this case?
A. Well, the first occasion that I can recall is the day on which the charges were filed against him and they were dismissed by the First Assistant, Mr. Klein, and I came [fol. 394] to Mr. Garrison in his office to ask him about the reasons for the dismissal and what would be done about the case then, and he told me that his office had dismissed the charges because they felt that there was a lack of sufficient evidence, and I said, "Well, it looks like the case may go before the Attorney General. What is your reaction to that, Mr. Garrison?" And he said something to the effect that, "Well, if it amuses them to carry this case further, well, they can go ahead and carry it further. I have my own business to attend to. As far as

I am concerned, as far as my office is concerned, the case is closed."

Q. When he referred to "them," who was he talking about? Do you know?

A. He didn't go any further than the "them." He did say—the only time he mentioned a particular person was the statement, "If it amuses them." He said this twice. He said it once in reference to the Clerk of Court, the Clerk of Court, "If it amuses the Clerk of Court to process this case"—because at that time there was some question as to whether the case would be processed, and then he used it again with the indefinite "them." I can infer who it was, but he didn't say definitely.

Q. Well, what impression was he giving you?

A. My impression was the Judges—

Q. Did he say anything else at this time to you that [fol. 395] you can recall as to his intentions about it?

A. As to his intentions? Well, no. His intention was at that time—and he was pretty emphatic about it—was that as far as he was concerned, the case was closed, his office had dismissed the case, and he did not feel that there was anything further to be done about it.

Q. Now, I take it that you are speaking about the affidavit, which the Judges had filed in the Clerk's office?

A. Yes, sir.

Q. —charging him with public defamation?

A. Correct.

Q. Now, did you talk to him after that?

A. Yes.

Q. When was that?

A. Oh, a week or so later when the Attorney General reinstated the case and I again went to his office and asked for an interview, and the sum and substance of that interview was that he said—he said, "It becomes apparent to me that someone is trying to get me out of office." He didn't say who was trying to get him out of office, but he said that—"By what has been happening, it is obvious to me that someone is trying to get me out of office."

Q. Now were these news interviews broadcast at your station?

[fol. 396] A. Yes, they were.

Mr. Gremillion: We tender the witness.
Mr. Organ: We have no questions, if the Court please.
Mr. Gremillion: That is all.

(Witness excused.)

W. W. THIMMESCH, a witness called by and on behalf of the State of Louisiana, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Jackson:

Q. Would you kindly state your name please.
A. Wieck W. Thimmesch.
Q. And what is your address, Mr. Thimmesch?
A. My residence address is 3407 47th, Metairie; my office address is 101 Supreme Court Building, New Orleans 12.
Q. What is your occupation?
A. I am Executive Counsel of the Louisiana State Bar Association.
Q. Are you also an attorney-at-law?
A. I am an attorney-at-law.
Q. What are your duties in connection with your position?
[fol. 397] A. I act as General Counsel to the State Bar Association, to its Committees, particularly the Committee on the Unauthorized Practice of Law and the Committee on Professional Ethics and Grievances.
Q. Are you in constant familiarity with the Canons of Ethics?
A. I beg your pardon, Mr. Jackson? I didn't hear your question.
Q. Do you deal principally in your position, one of the things, with the Canons of Ethics which govern the conduct of the members of the Bar?

Mr. Organ: Object to that as being irrelevant and immaterial to the issues in this lawsuit.
The Court: What is the purpose of this testimony? Off the record.

(Discussion off the record.)

Q. If an attorney has a meritorious complaint against a member of the judiciary, to whom does that go, in accordance with the Canons of Ethics?

Mr. Organ: That is the same thing, if the Court please.

Mr. Jackson: I just asked him to whom the complaint is addressed, if Your Honor please.

Mr. Organ: It is still irrelevant.

The Court: Mr. Jackson, I said you could ask him if any [fol. 398] complaint had been made by Mr. Garrison against the members of the judiciary. That is as far as you can go.

Mr. Jackson: Well, sir, he is not in a position to answer that, because he does not represent the particular body which receives these particular complaints. He is just—

The Court: Then, I wouldn't let you ask him anything about it at all.

(Witness excused.)

The Court: Do you need this in the record?

Mr. Jackson: Just to show that the State has now excused the witness, who was called under subpoena by the State.

Mr. Gremillion: The State calls Judge Malcolm O'Hara.

JUDGE MALCOLM V. O'HARA, a witness called by and on behalf of the State of Louisiana, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Gremillion:

Q. State your name please.

A. Malcolm V. O'Hara.

Q. What is your occupation?

A. Judge, Section "A," Criminal District Court, Parish [fol. 399] of Orleans.

Q. When were you elected?

A. July 28, 1962.

Q. Did you hold public office prior to that time?

A. Yes, sir, immediately prior to my resignation. I was a State Senator for the Sixth Senatorial District, elected in 1960.

Q. How long prior to that time did you hold public office?

A. Prior to that time I was an Assistant District Attorney, and prior to that I held office as Special Assistant District Attorney and First Assistant District Attorney.

Q. How long were you in the District Attorney's Office?

A. 1954 to '58.

Q. Where did you graduate, sir?

A. Tulane Law School.

Q. Are you married?

A. Yes, sir.

Q. Children?

A. Yes, sir, four.

Q. How old are they?

A. Thirteen, eleven, eight and seven.

Q. Now, Judge O'Hara, have you had occasion to read [fol. 400] the statement made by Mr. Garrison, District Attorney, that was published in the States-Item of November 2, 1962?

A. Yes, sir, I read the statement.

Q. Is that statement true?

A. Absolutely not, Mr. Gremillion.

Q. Have you ever attempted to tell the District Attorney how to run his office? I am talking about District Attorney Garrison, the Defendant in this case.

A. You mean Jim Garrison?

Q. Yes.

A. Have I ever attempted to—

Q. Have you ever attempted to tell Jim Garrison how to run his office?

A. No, sir.

Q. Have you ever sent him any messages on how to run his office?

A. No, I don't. I talked to his assistants from time to time and made suggestions, but I have never issued any directives.

Q. What section are you Judge of? Did you state?

A. Section "A."

Q. Who controls the assignment of cases in your docket?

A. The District Attorney or the Assistant assigned to my section.

[fol. 401] Q. Judge, do you consider yourself a sacred cow?

Mr. Organ: If the Court please, I object to that. That is not relevant and material. This is one time the Judge has no right to render an opinion.

The Court: What is that you say?

Mr. Organ: This is one time the Judge has no right to render an opinion. He is here to give facts.

The Court: I don't think that is relevant.

Mr. Gremillion: He said they were sacred cows. I wanted to find out if it was true or not.

Q. This statement issued by Mr. Garrison that was published in the paper, has that subjected you to ridicule to any extent?

Mr. Organ: I am going to object to that, unless the witness has—I object to this witness giving any testimony along that line on the ground that a proper foundation has not been laid for it and what other people have told him is purely and simply hearsay, if that is what he is about to testify to.

The Court: I think you better rephrase the question, Mr. Gremillion.

Mr. Gremillion: All right. I will be very glad to rephrase it, Your Honor.

Q. As a result of the statement made by Mr. Garrison that I referred to, have you been affected in any way?

[fol. 402] Mr. Organ: I object to that, if the Court please. He asked him as a result of this statement. That calls for the witness to render an opinion as to effect as a result of the statement, and I don't think that is pertinent here.

The Court: Off the record.

(Discussion off the record.)

The Court: Go ahead and answer.

The Witness: Restate it for me now, Mr. Gremillion. You have asked me if I have suffered anything as a result of—

Q. Yes.

A. —the statement?

Q. Yes.

A. Well, I am going to have to answer that this way: Naturally, being in public office and having held public office for a number of years, I know a number of people, and the impression that I get from the people who discuss this matter with me—it is done in the following ways: People jokingly ask me if it is true that we get all these vacations, whether or not I am a sacred cow, or whether I am influenced by racketeers. It is no one person or nothing specific; it is a cumulative sort of a thing done in a joking sort of manner, but the one thing—my one impression out of the thing, if this is admissible—is that the bench, the [fol. 403] criminal bench, seems to be getting the worst of public opinion, that the bench has suffered to some extent as a result of it, but nobody has hit me or threatened me or anything like that.

Mr. Organ: If Your Honor please,—

Q. But these instances have occurred, have they not, since this article was published?

COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Organ: I have a motion to make, if Your Honor please. I move that the answer of the witness be stricken, because it shows—No. 1, it is based on his impression, which is purely opinion; No. 2, if anything, it was based on hearsay, and I move that the answer of the witness previously given be stricken from the record.

The Court: I think he has a right to show the result of the statement, whether it would be defamatory or non-defamatory. He certainly has a right to show whether or not it has resulted in any injury to him or brought home to him that the public—that he has noticed a difference probably in social relationship that he might have had with the parties. Now don't take this.

(Discussion off the record.)

Mr. Organ: If the Court please, I think we may save time by this: First of all, I do want to reserve a bill of exception, because I don't want to open any doors by not reserving a bill, so I would like to reserve an exception [fol. 404] to Your Honor's ruling and include in the bill the question, the answer, our motion to strike the answer, Your Honor's ruling on the objection, our reasons for making it, all of the testimony in the case, the entire record of the bill of information, and that would be Bill of Exception No. 10, and I will ask that that bill of exception and the objection be made general without the necessity of repetition as to all of the Judges, if they should take the witness stand, and the rest of this Judge's testimony, if the Court please.

The Court: All right. That goes into the record. At this time I am going to state that the objection did not come until after the question was propounded—I believe you did object—

Mr. Organ: I did object before, and then I moved to strike it.

The Court: That is right.

Mr. Organ: —because it showed that it was both hearsay and it was impressions.

The Court: All right. The Court admitted this—not as to any conversation that took place outside of the presence of the Defendant—the witness could not testify as to conversations outside of the presence of the Defendant. However, the Court is of the opinion that any statement made such as would give rise to an action in defamation would be a statement such as might have an effect upon [fol. 405] the pulse of the public, particularly in the case of a public officer. The Court is allowing the evidence to stand solely for the purpose of showing whether there was any reaction of the public, without the details of the reaction, if there was any reaction of the public to the public article such as it would bring it within the intendment and the definition of *defamation* as set forth in the Revised Statutes, Title 14, Section 47, and restricting it to that. I am restricting it to that and that alone, to show that there might have been a reaction of the public in ac-

cordance with the definition of *defamation* as set out in that Article.

Q. Now, Judge O'Hara, the incidents that you have referred to a minute ago, have they occurred more than once?

A. I would say so, yes, sir.

Q. Have they occurred on more than one occasion?

A. Yes, sir.

Q. Have they occurred at more than one place?

A. Yes, sir.

Q. Have they all occurred in the City of New Orleans?

A. Yes, sir.

Q. Judge O'Hara, are you influenced by racketeers in any of your actions as a Criminal District Judge?

A. Absolutely not.

Mr. Gremillion: We tender the witness.

[fol. 406] Cross examination.

By Mr. Organ:

Q. Judge, when were you sworn in?

A. September 25, 1962.

Q. Did you take the bench immediately?

A. Oh, about five or six days later. We had to move our courtroom equipment around. It took us about a week to get started.

Q. Now, did you tell various assistants of the District Attorney's Office that the Judges, meaning you and the other Judges, were not going to approve continued vice investigation funds out of the Fines and Fees Fund?

A. I did make certain remarks along those lines, but I want to explain them and explain them as thoroughly as I can.

Q. Well, please do.

A. Shortly after I took office, I had occasion to meet with Frank Klein, the First Assistant District Attorney, and the subject of motions and expenditures, of course, was com-

monplace—it was the discussion of the building in general—and Mr. Klein and I got to talking about these motions, and I emphatically, and, I believe, categorically told Frank Klein that I would not sign any so called motions for undercover work or vice work, whatever you want to call it. I didn't say that the other Judges wouldn't. I said some [fol. 407] of them—my impression is that some of them may not, but I said that I am not going to.

Q. All right, sir.

A. Now let's go on a little bit more. I believe that I made a similar statement to Mr. Frank Shea, I believe. I believe I mentioned it to John Shea, who is the Assistant District Attorney assigned to my section, and I believe that I made a similar statement to Mr. Dalton Williams, who is the Assistant Attorney, I believe, in charge of administrative matters within the District Attorney's Office.

Q. Now, Judge, you have lived in New Orleans for how long?

A. All my life.

Q. All your life. You have been aware, have you not, that there has been a practically continuous violation of the B-drinking, prostitution, and gambling statutes in New Orleans all of your life, too, haven't you?

A. It seems to be continually in the newspaper.

Q. Right. Now, you are also aware, are you not, that the District Attorney was waging a rather successful campaign to the extent that he was able to close up some Canal Street bars, namely, the Monkey Bar and the French Casino and bars in that area that had been open at least 20 years, had he not?

A. That is correct.

[fol. 408] Q. And those were closed just before you took office, sometime in August? Is that correct?

A. I wasn't in the city in August, but I believe it was right around that time.

Q. But that was the first time in 20 years that those places had been closed, in at least 20 years?

A. As far as I know, that is right.

Q. And those places, to your knowledge, were places where there had been a great many violations of B-drinking and prostitution particularly?

A. Well, not to my knowledge, but from what I had heard, these were the—

Mr. Gremillion: Just a minute. If he heard it, it is hearsay, Your Honor, and I am going to ask that he testify to what he personally knows. I know that on cross-examination he has got a wide latitude, but let's stick to what this witness knows. If he can testify that he has been in those places and seen those things, it is admissible.

The Court: I think the evidence should be confined to what the witness may know and not to hearsay.

Mr. Organ: Well, if Your Honor please, we are not—we think it is admissible on the basis that we are trying to show that this was public knowledge, this is something generally known in the City of New Orleans about these places and not hearsay. This is something that is generally [fol. 409] known, because there were many arrests in these places. It appeared in the newspapers time and time again. It is not hearsay.

The Court: Ask him those questions, but don't ask him what—

Q. Now is it not a fact, Judge O'Hara, that because the newspaper stories showed continuous—rather, indicated continuous violation and arrests there over the period of years, and because of actual arrests at those areas, which were reported, that these places were generally known to be places where there were hotbeds of B-drinking and prostitution.

Mr. Gremillion: Just a minute. Object to that, Your Honor. I don't see how it is possible for this witness to know all that. The best evidence of that would be the convictions and the court records. You might ask him if he is familar with those or ask him other things, but he can't testify to all that. That is obviously hearsay.

The Court: Mr. Gremillion, I believe he said he was District Attorney for a period of time.

The Witness: About two years.

The Court: He should have some knowledge.

Mr. Gremillion: He has never asked him that, Judge.

The Court: He testified to it when you asked him that. It is in the record. It doesn't make any difference which

one asked him. He said in giving his qualifications in [fol. 410] answer to your questions that he had served in the District Attorney's Office.

Mr. Gremillion: That is true, but I didn't ask him about any B-drinking and closing bars, and that is what he is going into now, and that is what I am objecting to. If he asks him about his experience in the District Attorney's Office or in the Senate or as a Judge, that is perfectly all right, but I don't believe this witness can say that he has seen B-drinking in the Monkey Bar unless he testifies he has been there and seen it.

The Court: I believe this witness has testified already that he has no knowledge from having seen it—I don't presume that—but certainly, as a matter of general knowledge, he would have the right to testify as to what his experiences have been in holding the District Attorney's office and in any other matters that might come to his attention. Go ahead and answer the question.

A. To answer the question, during the four years that I was in the District Attorney's Office, there was a constant flow of violations which emanated from the Canal Street area that you have made reference to and a constant flow of violations, of various vice activities, which emanated from the French Quarter, that is, during my four years, and, as far as I know, a lot of people—not a lot of people, but some people have called me at various times for parole [fol. 411] while I was in the Senate, for paroles for violating various city ordinances, which occurred in that area, so I would say that it has been a continual sort of a thing, as far as I know. Now, during the Dowling administration, I don't know. I don't believe that I ever represented any of those people; so I don't know what happened during those four years.

Q. But it is fair to state that over all those years that the police force itself had never been able to close these places down. Isn't that correct?

Mr. Gremillion: Your Honor, I hate to be objectionable. He is asking this man is it a fact that the police force hadn't been able to close it down.

The Court: Don't go into that. You can ask him his knowledge of that, but what somebody else might have done is not admissible.

Q. Did the police force ever close these places up?

Mr. Gremillion: I again object.
The Court: It might be within his knowledge.

A. When I was in the District Attorney's Office, we padlocked some place. My recollection is that it was some address on Jackson Avenue, which is quite far removed from this immediate vicinity.

Q. But in the Canal Street places—

[fol. 412] A. I know of none prior to Mr. Garrison's administration.

Q. Now, as the former Assistant District Attorney, isn't it fair to state that nothing could have been to the greater advantage of the Canal Street operators, the Canal Street joint operators, than to have the District Attorney's Fines and Fees Fund funds blocked from use in investigation?

A. I disagree with you, Mr. Organ. I think your question is a pretty broad statement. I am not sure of where you are going and what you are seeking to elicit from me. Be a little more specific, and I will try to answer your questions.

Q. All right.

A. I am not trying to evade answering.

Q. I am sure you are not.

A. I am just—pin it down just a little bit.

Q. If the District Attorney with the proper funds could conduct an operation against these vice joints on Canal Street that were successful in closing them, would it not be to the very interest of these Canal Street operators to keep the District Attorney from having funds with which to do that?

Mr. Gremillion: If Your Honor please—

A. You are asking me for an opinion.

Mr. Gremillion: Wait just a minute. He is asking the [fol. 413] witness for an opinion.

The Court: Objection sustained.

The Witness: Let me answer that, sir. May I make a—

Mr. Gremillion: The Judge has sustained the objection, Judge.

The Witness: I understand. I understand.

Q. Now, Judge, I am sure you are familiar with the law under which the Fines and Fees Fund was made available to the District Attorney's Office.

A. Yes, I know.

Q. That law was enacted during the previous administration of Mr. Garrison (sic). You are aware of that?

A. I think it was passed in 1960.

Q. Now, you are also aware, I am sure, that that law requires the signature of one Judge on a motion to O.K. expenditures from that fund.

A. Yes, that is what the law says.

Q. That is what the law says?

A. Yes.

Q. Now, in that connection, did a rule that the Judges made sitting en banc in October of 1962 comply with the law?

Mr. Gremillion: I object to that. That calls for an opinion of the witness. He can state what the Court did [fol. 414] en banc, but whether it complies with the law is for this Honorable Court to decide, because the law speaks for itself, Your Honor.

Mr. Organ: If the Court please, this witness is both a Judge and an attorney and a former Assistant District Attorney, and certainly he has the right to render an opinion on the stand. I am asking him for an opinion, if in his opinion—

The Court: At this time though he is a witness, he is not acting as anything, Assistant District Attorney or Judge.

Mr. Organ: But doesn't it go to bias and motive, Judge?

The Court: What is that?

Mr. Organ: As a witness, if we can show that this Judge did not consider that their ruling complied with the law, and yet their—

The Court: The facts will speak for themselves. I believe that statute is one of 1960, and I believe—

Mr. Organ: No question about that.

The Court: —we in the country come under the first paragraph and I believe the District Attorney of New Orleans comes under the second paragraph of that statute, and I believe it provides for approval by one of the Judges. Now you can prove that they did not pay on the [fol. 415] approval of one of the Judges but probably required five, but, now, to call on the witness to give an expression as to whether or not his actions were legal or not would be calling for his opinion. It would be up to me to consider whether his action was legal or not.

Mr. Organ: I am in full accord with what Your Honor says, if the Court please, and I am not calling on him for legal opinion which would have any bearing or weight on the Court as a legal opinion, but to show the state of mind of the Judges, that they knowing, because they are legally trained, knowing that the statute only called for one signature, they made an arbitrary ruling that five Judges had to sign it, so it goes to the—

The Court: That speaks for itself, Mr. Organ.

Q. You did have an en banc meeting in October?

A. I believe we had several of them. I do know that there was—our first one was October 4, I believe, and then I believe there was perhaps a series of them, relating to disbursements of fines and fees monies.

Q. When did that meeting start on October 4th, what time of day?

A. What time of day?

Q. Yes.

A. I believe that we met—I think that the Judges started the meeting—this is the best I can recall, Mr. Organ—[fol. 416] that we met sometime in the morning, and I believe we invited Mr. Garrison to attend the meeting, which was continued into the afternoon, and Mr. Garrison came in at approximately 1:30 in the afternoon.

Q. Now, in other words, that meeting was actually called to discuss the Fines and Fees Fund, was it not?

A. Yes, sir, yes, sir.

Q. And you know for a fact that Mr. Garrison was invited to take part in that meeting, do you not?

A. He appeared before the Judges by invitation, I believe.

Q. By invitation. You also know, do you not, Judge, that his invitation called for him to appear at 1:30?

A. I believe it did.

Q. —in the afternoon, but the Judges had previously met all that morning. Isn't that correct?

A. As I recall, we met prior to Mr. Garrison coming into the room that afternoon. I am almost positive of it.

Q. And isn't it a fact, Judge O'Hara, that the decision as to how to handle the Fines and Fees Fund were made by the Judges before Mr. Garrison ever had an opportunity to present his views?

A. You could be right, Mr. Organ. I can't pin it down that much. I believe it was that day or it was very shortly [fol. 417] thereafter that the five-Judge rule went into effect, but whether it was decided that morning, I can't be positive.

Q. Well, do you recall when Mr. Garrison entered the meeting with the Judges sitting en banc that he was informed that the five out of eight rule was going to be applied? Do you recall that?

A. I believe you are right, but, as I say—in other words, I am not absolutely positive, but I believe that you are right.

Q. In other words, the decision had already been made and settled before he ever got there?

A. Possibly.

Q. All right. Now, what was that rule, that five out of eight Judges would have to sign a motion before any funds could be paid out of the Fines and Fees Fund?

A. I don't believe it applied to all expenditures. I believe it applied to everything except emergency orders for extradition and repayment of expenses incurred by witnesses and so forth.

Q. How many had to sign in case of extradition?

A. They were termed—I think they came under the category of emergency orders and require three signatures.

Q. Three signatures, of three Judges?

A. Correct.

Q. How much is your salary, Judge?

[fol. 418] A. $18,000.00 a year.

Q. Now are you familiar with the legal holidays?

A. To some extent. I couldn't reel them off for you, Mr. Organ.

Q. Now, of course, for that $18,000.00 a year, you do not work on Saturday and Sunday?

A. No, sir. As a rule we do not, no. I don't.

Q. Excuse me. Go ahead.

A. I said I don't work on Saturday.

Q. Now also Act 210 of 1958 sets out the legal holidays, and you do not work on legal holidays, precisely as follows: All Saints' Day, Armistice Day, Thanksgiving Day, Christmas Day, New Year's Day, Battle of New Orleans, Robert E. Lee Day, Washington's Birthday, Good Friday, National Memorial Day, Confederate Memorial Day, Independence Day, Huey P. Long Day, Labor Day, and Christopher Columbus Day. Now those are the legal holidays, are they not, Judge?

A. They are legal holidays, but that does not imply or infer that I am not at the office or some other Judges are not.

Q. No, I am not trying to imply that.

A. They are holidays. I believe—I think you are reciting them from the statute.

Q. Unquestionably you are entitled to close your Court and not be hereon those days.

[fol. 419] A. That is what the law says.

Q. In addition to that, there are two other days, Mardi Gras Day and Election Day, on which the Court is not open?

A. That is right.

Q. Is that correct?

A. Yes.

Q. Now, Judge, if I were to advise you that if you take the Saturdays and Sundays, the legal holidays, and Mardi Gras and Election Day away from the 365 days in the calendar year, that would leave 246 working days, would you disagree with my arithmetic on that?

A. I don't think so.

Q. Now, you are also entitled under the law, are you not, to two and a half months of vacation?

A. That is what the statute says, yes, sir.

Q. Right. So would it be fair to say then—

Mr. Gremillion: If Your Honor please, I object to the irrelevancy of this. I realize that the witness is under cross-examination, but that is not this witness's fault—the law provides that. The Court can take cognizance of all this.

Mr. Organ: I am laying the groundwork for—

The Court: I am familiar with it, but I don't mind his repeating it.

[fol. 420] Q. Then would it be fair to state that a Judge of the Criminal District Court is entitled to an additional 50 working days off of that 246 days?

A. You mean 50 vacation days?

Q. Another 50 working days. In other words, we have 246 working days left, having already taken out Saturdays and Sundays and the legal holidays. There are five working days in a week and 10 weeks in a two and a half month period, so you have 50 working days that you are entitled to vacation.

A. I believe that is right.

Q. And that would leave 196 working days. Would you quarrel with my arithmetic there?

A. I don't think so.

Q. So, Judge, then presumably the Court should be in operation 196 days of the year. Is that correct?

A. Presumably, excluding sickness and such things as that.

Q. Now, if I told you that the Court took as much as an additional 70 working days, without being in operation, off of that reduced figure of 196 days, can you quarrel with my mathematics on that?

A. If they took what?

Q. An additional 70 working days in addition to Saturdays and Sundays, legal holidays, Mardi Gras, Election Day, and another 50 vacation working days—if I advised [fol. 421] you that over a period of one year, one Court took an additional 70 days, would you be surprised?

Mr. Gremillion: If Your Honor please, I think that is highly irrelevant. He is asking this person somthing that he doesn't know about.

Mr. Organ: He may be familiar with it.

Mr. Gremillion: We are not trying this man for inefficiency.

Mr. Organ: He can say he doesn't know.

Mr. Gremillion: Just a minute. Let me finish my remarks. I am speaking to the Court. We are not trying this man for inefficiency; we are trying the District Attorney on a defamation charge—that is what we are really trying, and all these questions are immaterial. Now, if Your Honor wants to listen to them, it's perfectly all right with me, but I can't see where that has got anything to do with whether this Judge acted with racketeering influences in his decisions. That is the whole point of this case.

Mr. Organ: If the Court please, there is a lot more on the Bill of Information than racketeering information.

The Court: I am familiar with that. You filed an application for a Bill of Particulars, and in that application for a Bill of Particulars it said that it was adopting the whole statement and not taking—you asked for whatever part of it was considered defamatory. If I remember cor-
[fol. 422] rectly, the State answered your Bill of Particulars in its answer and said that the whole of the statement would be considered, and I agreed with their contention in overruling your motion for a Bill of Particulars for the reason that you could not take a statement out of context and that he had already answered it. Therefore, since the whole—since the indictment is predicated on the whole of the statement and the State says it is relying on the whole of the statement, then I think that perhaps you would have a right to question him on that feature of the Bill of Indictment since he is a witness. I don't think there is any question about that. Now off the record.

(Discussion off the record.)

The Court: All right. You may answer.

A. You asked me if I would be surprised?

Q. Yes.

A. I haven't made any study of the sections of the Code.

I couldn't say that your figure would be accurate or grossly incorrect. I really haven't studied it. If you ask my opinion as to whether I would be surprised, I know at least one Judge in the building who has a rule that there is no docket set on Friday, which would account for, say, 52 Fridays, so I am not shocked, no.

Q. What division is that?

A. As far as I know, it has been the practice of Judge [fol. 423] Cocke not to have a docket on Friday. I think he occasionally does. I don't know what those occasions are, but the general rule of Judge Cocke's operation is that he does not have a docket on Friday.

Q. And that is Division "E"?

A. "E," correct.

Q. Now, how long has it been since you have been Assistant District Attorney?

A. How long have I been away from the D. A.'s Office?

Q. Yes.

A. About five and a half years or so.

Q. Did you ever have anything to do with Division "B" while you were Assistant District Attorney?

A. Occasionally, when the man regularly assigned to "B" may have been sick or incapacitated, I might have sent someone into that Section, but, as far as being an active assistant in that Section, I never was.

Q. You were in a supervisory capacity over—

A. More or less, yes, more or less. I think that I handled a few stay pleas in there and other matters, but I was never regularly assigned there myself.

Q. You do know for a fact that it is very rarely that a trial is ever held in Section "B," do you not, Judge O'Hara? [fol. 424] A. I think that the bulk of the business transacted in Section "B" is by plea, and I would have to say not by jury trial. That is correct.

Q. Now, since you have been a Criminal Judge, can you tell me what kind of docket has been set by the District Attorney's Office?

A. You mean in my Section?

Q. Yes.

A. I would say a normal docket—the month of October—let's see—when I took office, we didn't have a jury in

October. We set probably what you would consider a normal non-jury month sort of a docket. November and December we had a jury docket, jury docket this month. The District Attorney in the first jury month I think set three cases a day, and during the months of December and January of 1963 I think he has been making a practice of setting about four felony cases a day.

Q. Well, now, isn't it fair to say that you certainly cannot say that the District Attorney has not tried to conclude as many cases as possible in your Section since you have been Judge?

A. I think that the docket is normal, sort of a routine situation in Section "A." I don't think that the District Attorney has been derelict. I may quarrel with some of his procedures, but I can't say that the administration has been [fol. 425] derelict by any means.

Q. Actually you certainly have no basis—you would certainly have no basis for saying that the District Attorney's Office is responsible for the backlog or the extraordinary number of people in the Parish Prison, could you?

A. I don't think it is an extraordinary number of people there. I mean, the building was designed for a certain number of people some 35 years ago, and I think that the place is probably experiencing very crowded conditions.

Q. Well, let me—

A. I don't think it is the result of the District Attorney particularly or his fault or the Court's fault.

Q. May I ask—

A. —population-wise.

Q. The answer to my question is that you could not lay the blame on the District Attorney's Office?

A. I don't think so. I think the District Attorney has set a regular docket and proceeded in a normal sort of manner.

Q. Now, Judge, did you ever have people communicate to you—now don't tell me what they have said to you, but did you ever have them communicate to you any opinions as to whether or not the District Attorney should press his investigation of vice in New Orleans or not—I mean people [fol. 426] from outside the Court?

A. Have I ever heard—

Q. Yes. Have you ever had people express an opinion to you—

A. Yes.

Q. —one way or the other about that?

A. In very definite ways, yes.

Q. In very definite ways? In other words, against his vice investigation?

A. No.

Q. For his vice investigations?

A. I would say so, yes.

Q. Would you say the majority of them are in favor of the vice investigations?

A. Yes, sir.

Q. Were any of them against the vice investigations?

A. I think a few people here and there, but the consensus was that perhaps it was a good thing.

Q. Now the point I am trying to make, Judge, is this: There were people who indicated to you that they didn't think that he should do that. Isn't that correct?

A. People didn't come directly to me and say, Garrison is no good because he is investigating or carrying on the investigation against vice in the [illegible]arter—nobody came to [fol. 427] me directly and said that. You will hear people talking about—probably the Bourbon Street proponents might say that perhaps this is being carried too far, but very very few of those, and I couldn't pinpoint them as to date, time, or place at all.

Q. So there were people that did express opinions in your presence?

A. You would hear general talk, Mr. Organ. People wouldn't come to me and lay their opinion on the line, but what I am trying to say is that, from what I have heard in various and isolated conversations among lawyers, business people, a pretty good cross segment of the community—you would overhear conversations.

Q. Now, you don't know the motives of those people, do you?

A. What is that?

Q. You don't know what the motives of those people were, do you?

A. No. I just think that there is a certain element in the community that is anti-law enforcement, that is all.

Q. Would you say that that element in the community is fostered by the racketeers?

A. I don't think so. I don't know.

Q. Can you tell us who originated the five out of eight [fol. 428] idea or concept in the en banc meeting?

A. The meeting is in some spots vague in my mind. I believe that the suggestion was first made by Judge Cocke, but I am not positive of that. I believe so.

Q. Was Judge Cocke more or less the moderator and moving force in that meeting?

A. He was very vocal.

Mr. Organ: I have no further questions.

Mr. Gremillion: If Your Honor please, it is 5:00 o'clock. We have quite a few questions to ask this gentleman. Before we take him on redirect, does Your Honor wish to finish with this witness or do you want to observe the Rule?

The Court: You would probably have a few questions on redirect?

Mr. Gremillion: Yes, quite a few, which were brought out during his cross-examination.

The Court: Then there will probably be recross. Unless you can get through in the next five or 10 minutes, I will recess until tomorrow.

Mr. Gremillion: I don't think it would be that short.

The Court: We now stand recessed until tomorrow morning at ten o'clock.

(Thereupon, at 5:03 o'clock p.m., hearing in the above-entitled matter was adjourned to Tuesday, January 22, 1963 at 10:00 o'clock a.m.)

LIBRARY
SUPREME COURT, U. S.

Supreme Court of the United States

OCTOBER TERM, 1967

No. [illegible] 4

JIM GARRISON, APPELLANT,

vs.

LOUISIANA.

APPEAL FROM THE SUPREME COURT OF LOUISIANA

FILED AUGUST 28, 1968
JURISDICTION NOTED NOVEMBER 12, 1968

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No. 400

JIM GARRISON, APPELLANT,

vs.

LOUISIANA.

APPEAL FROM THE SUPREME COURT OF LOUISIANA

INDEX

	Original	Print
Record from the Criminal District Court, Parish of Orleans, Louisiana		
Chronological order of minute entries	5	1
Endorsements on the reverse of the information for violating Revised Statute 14:47	27	17
Petition of the Judges of the Criminal District Court to Jack P. F. Gremillion, Attorney General, State of Louisiana	33	22
Order of the Chief Justice of the Supreme Court of Louisiana appointing the Hon. William H. Ponder as Judge Ad Hoc	38	25
Motion of Attorney General to recuse Jim Garrison	39	26
Information	40	26
Motion of Jim Garrison to recuse William H. Ponder, trial judge	46	33
Application for bill of particulars	48	34

RECORD PRESS, PRINTERS, NEW YORK, N. Y., JANUARY 14, 1964

	Original	Print
Record from the Criminal District Court, Parish of Orleans, Louisiana—Continued		
Demurrer and motion to quash	51	36
Motion for trial by jury	54	38
Answer to application for bill of particulars	57	40
Answer to demurrer and motion to quash	59	41
Answer to motion for trial by jury	65	46
Memorandum in support of answer filed to defendant's motion for trial by jury	67	47
Proposed propositions of law Nos. 1-17	69	48
Motion in arrest of judgment	86	57
Motion for a new trial	88	58
Motion for appeal to Supreme Court of Louisiana and order thereon	91	60
Bills of exception Nos. 1-4, 6, 8-11, 15-18, 20-26, with per curiams	92	61
Clerk's certificate (omitted in printing)	170	117
Proceedings in the Supreme Court of Louisiana	173	118
Opinion, Hamlin, J.	173	118
Application for rehearing with notation "Rehearing Refused"	227	173
Petition for supersedeas, stay of execution and recall of mandate	245	187
Order for supersedeas, stay of execution and recall of mandate	248	189
Notice of appeal to the Supreme Court of the United States	249	190
Further record from the Criminal District Court, Parish of Orleans, Louisiana	252	192
Transcript of trial proceedings—January 21, 22, 23, and 24, 1963	252	192
Appearances	252	192
Preliminary matters	253	192
Testimony of Bert Hyde—		
direct	258	196
cross	267	201
redirect	274	207
Donald Wharton Coleman—		
direct	277	208

	Original	Print
Further record from the Criminal District Court, Parish of Orleans, Louisiana—Continued		
Transcript of trial proceedings—January 21, 22, 23, and 24, 1963—Continued		
Stipulation re testimony of Walter Cowan	279	210
Testimony of Arthur Roane—		
direct	280	210
Colloquy between court and counsel	283	212
Testimony of Arthur Roane— (continued)—		
direct	287	214
cross	298	222
redirect	305	226
recross	306	227
R. J. Dempsey—		
direct	308	228
Colloquy between court and counsel	315	232
Testimony of R. J. Dempsey— (continued)—		
direct	321	235
cross	325	238
Jack Kneece—		
direct	337	246
Theresa E. Shean—		
direct	344	250
State's exhibit no. 3	348	252
Testimony of Robert Kelso—		
direct	362	260
cross	381	272
Bill Reed—		
direct	383	273
cross	390	278
redirect	391	279
Bern Rotman—		
direct	392	279
W. W. Thimmesch—		
direct	396	282
Judge Malcolm V. O'Hara—		
direct	398	283
Colloquy between court and counsel	403	286

	Original	Print
Further record from the Criminal District Court, Parish of Orleans, Louisiana—Continued		
Transcript of trial proceedings—January 21, 22, 23, and 24, 1963—Continued		
Testimony of Judge Malcolm V. O'Hara—(continued)—		
direct	405	288
cross	406	288
redirect	432	303
recross	435	305
further redirect	436	306
further recross	437	306
Judge William J. O'Hara—		
direct	438	307
cross	462	322
Colloquy between court and counsel	497	344
Testimony of Judge William J. O'Hara—(continued)—		
cross	500	346
Judge Shirley G. Wimberly—		
direct	501	347
cross	512	353
redirect	551	376
Judge Oliver Paul Schulingkamp—		
direct	554	378
cross	567	385
redirect	598	404
recross	602	407
Judge Edward A. Haggerty, Jr.—		
direct	609	411
redirect	626	421
recross	626	421
redirect	684	456
further recross	689	459
further redirect	693	462
Judge Bernard J. Bagert—		
direct	694	462
cross	712	473

	Original	Print
Further record from the Criminal District Court, Parish of Orleans, Louisiana—Continued		
Transcript of trial proceedings—January 21, 22, 23, and 24, 1963—Continued		
Testimony of Judge George P. Platt—		
direct	730	484
cross	739	490
redirect	751	498
recross	754	499
Judge Thomas M. Brahney, Jr.—		
direct	762	504
cross	783	516
Judge J. Bernard Cocke—		
direct	794	523
cross	800	526
Colloquy between court and counsel	821	538
Testimony of Judge J. Bernard Cocke— (continued)—		
cross	823	540
Colloquy between court and counsel re impeachment of witness	837	548
Testimony of Judge J. Bernard Cocke— (continued)—		
cross	841	551
Joseph I. Giarrusso—		
direct	846	554
Colloquy between court and counsel	851	557
Testimony of Joseph I. Giarrusso— (continued)—		
direct	855	560
Colloquy between court and counsel	857	560
Testimony of Joseph I. Giarrusso— (continued)—		
direct	861	563
cross	863	564
The State rests	863	565
The Defense rests	863	565
Colloquy between court and counsel re charges	866	565

	Original	Print
Further record from the Criminal District Court, Parish of Orleans, Louisiana—Continued		
Transcript of trial proceedings—February 4, 6, and 28, 1963	875a	571
Court's ruling on propositions of law	877	571
Colloquy between court and counsel re court's ruling	893	581
Opening argument by plaintiff	901	586
Argument by the defendant	907	590
Rebuttal by the plaintiff	926	602
Opinion, Ponder, J.	941	610
Motion for a new trial and motion and arrest of judgment	981	635
Motion in arrest of judgment overruled	984	635
Motion for a new trial overruled	985	636
Sentence	987	637
Motion for order of appeal	990	639
Alternative sentence	992	640
Bills of exception with per curiams filed	992	640
Order of appeal and bail granted	994	641
Clerk's certificate (omitted in printing)	996	642
Order noting probable jurisdiction	997	642

[fol. 432] Tuesday, January 22, 1963

(Pursuant to recess of Monday, January 21, 1963, the trial in the captioned cause was resumed at 10:00 o'clock a.m. on Tuesday, January 22, 1963, all appearances as previously noted.)

Proceedings

The Court: Gentlemen, are you ready to proceed?

Mr. Gremillion: Yes, sir.

Mr. Organ: Yes, your Honor.

The Court: Are you satisfied that all witnesses are out of the courtroom?

(Thereupon, any witnesses present in the courtroom were instructed to retire.)

JUDGE MALCOLM V. O'HARA, having been previously sworn, resumed the stand and testified further as follows:

Redirect examination.

By Mr. Gremillion:

Q. Judge, do you have a law clerk?

A. No, sir.

Q. Do you have a library?

A. There is no library for the Judges in the building at all, except a small library maintained by the District Attorney's office.

[fol. 433] Q. Where do you do your research if you have to?

A. We must go down to the Louisiana State Law Library in the Supreme Court Building.

Q. How many jury terms have you had since you have been a Judge?

A. I took office the latter part of September, did not have a jury in October but we impaneled a jury in Section "A" in the months of November, December and this month, January.

Q. How many cases have been disposed of in your division since you became a Judge?

A. I believe the figure shows something like 150-some-odd. I don't have the statistics with me but that's the best of my recollection that it's around 150 or so.

Q. Did you make a count of those?

A. We checked the minutes, yes.

Q. Judge, was Mr. Garrison an Assistant District Attorney when you were in the D.A.'s office?

A. Yes, sir, he was.

Q. Were you his superior?

A. I had some supervisory jurisdiction over Mr. Garrison, yes, sir.

Q. Was the system of jury trials at the time you were in the office with Mr. Garrison, the same system that is being used today?

[fol. 434] A. Yes, sir.

Mr. Organ: If your Honor please. I move that the answer be stricken. I rose to make an objection to the question and the witness answered first. I object to that, on the grounds that it's beyond the direct examination or the cross-examination of this witness. I move that the answer be stricken. The answer was made while I was trying to make my objection.

The Court: Mr. Organ, didn't you cross examine him on yesterday on the number of cases that had been disposed of in the various courts?

Mr. Organ: I don't know about the number of cases. I cross examined him on the courts but did not cross him on the system in the District Attorney's office.

The Court: Didn't you ask him with reference to his service as Assistant District Attorney?

Mr. Organ: I asked him certain aspects but not with respect to the operation of the District Attorney's office.

Mr. Gremillion: I went very thoroughly into the whole thing—how many days they worked, the activities in the office, all of that material and that's the purpose of my question, to show that the same system has been utilized by this very defendant and by the courts all through the period of time.

[fol. 435] Mr. Organ: If that's the purpose, to show that Mr. Garrison is using the same system previous District

Attorneys did, I withdraw my objection. He stated his purpose and I have no objection.

Q. Would you answer the question?

A. I answered it, yes, sir.

Q. Has the Defendant in this case or any of his assistants complained to you since you have been a Judge about the system of trying cases?

A. No, sir.

Mr. Gremillion: We have no further questions.

Recross examination.

By Mr. Organ:

Q. Judge O'Hara, the Defendant has no right to tell the Criminal District Judges how to handle their courts, does he?

A. Nor do we have any right to tell him how to operate his office.

Q. Correct.

A. They are entirely separate operations. The District Attorney is supposed to run his office and the Judges have absolute control over the Courts.

Q. He would be most presumptuous to tell you how to handle cases, would he not?

A. He would, yes.

[fol. 436] Q. Now, I believe you testified when you were in the District Attorney's office that Mr. Garrison was an Assistant D.A. Were you friendly then?

A. Very friendly.

Q. Have you been friendly ever since then?

A. Yes.

Q. Have you been friendly right up until today?

A. I would say that Mr. Garrison and I are friends, yes.

Q. Has Mr. Garrison ever exhibited any animosity whatever to you to your face?

A. No, sir.

Q. Was there any other of the eight Criminal District Judges in the District Attorney's office while Mr. Garrison was also there?

A. Mr. Haggerty was an Assistant District Attorney while Mr. Garrison was there.

Q. And he is now the Judge of Section "C" of this Court?

A. That's correct.

Mr. Organ: Thank you, Judge.

Further Redirect examination.

By Mr. Gremillion:

Q. Judge, did you support Mr. Garrison when he ran for office?

[fol. 437] A. Very ardently.

Q. Do you know of any reason why he should have made these statements about all the Judges on November 2?

A. No, sir.

Mr. Gremillion: Thank you.

Further Recross examination.

By Mr. Organ:

Q. Would it not be fair to state, Judge O'Hara, that Judge Cocke's dislike for the District Attorney was the main factor in precipitating this entire problem?

Mr. Gremillion: I object to that because it calls from an opinion from this witness which only Judge Cocke can answer.

Mr. Organ: I don't think it calls for an opinion. He knows the facts. This witness knows the facts.

The Court: I think if you can show any manifestation of ill will or dislike, I think it would be admissible but just for his opinion as to what Judge Cocke might think or might not think, I don't think this witness is a competent witness on that question.

Mr. Organ: Well then, I will rephrase my question.

Q. Are you aware of the fact that Judge Cocke has dislike for the District Attorney and has exhibited it on various occasions?

Mr. Gremillion: I have no objection to the witness an-
[fol. 438] swering the question but I only want him to answer as to his personal knowledge.

The Court: I think he knows what he can answer to and what he can't. Go ahead, Judge.

A. Give it to me again.

Q. Are you not aware, Judge O'Hara, that Judge Cocke has animosity towards the District Attorney and has exhibited that animosity?

A. I believe it's common knowledge around the building.

Mr. Organ: That's all the questions I have.

Mr. Gremillion: I have no questions.

(Witness excused.)

The Court: Do you think you will want to recall the Judge? You want him under the Rule?

Mr. Gremillion: He is exempt. We are finished with him.

Mr. Organ: We will certainly exempt him from the Rule, if the Court please. We may want to recall him—we may or may not but we have no objection to exempting him from the Rule.

Judge William J. O'Hara, called as a witness by the State of Louisiana, after being first duly sworn, was examined and testified as follows:

Direct examination.

[fol. 439] By Mr. Gremillion:

Q. What is your name, Judge?

A. William J. O'Hara.

Q. Where do you live?

A. 2303 Prytania Street, New Orleans.

Q. What is your occupation, Judge?

A. Well, at present I am retired. I was Judge of Section "A" of the Criminal District Court for thirty years, or longer than that.

Q. Is the present holder of that office your son?

A. Yes.

Q. When did you retire, Judge?

A. Well, I officially retired in June—about June 14 of 1962—but under the law, I had to continue in office until the successor was sworn in, so actually I retired some time in the latter part of September, 1962.

Q. Judge, did you make a statement to the press concerning this case on November 1, 1962? Did you make a public statement?

A. Yes, I did.

Q. Have you got a copy of the statement?

A. Yes, I have.

Q. Would you please read it?

Mr. Organ: I am going to object to that. That's purely a self-serving declaration on the prosecution's part. What [fol. 440] this man has said outside of the presence of the Defendant has absolutely no relevancy to this case, and is purely hearsay.

Mr. Gremillion: If your Honor please, the statement of November 2 which Mr. Garrison made, which is part of the bill of information in this case, contains numerous and many statements that the statement made by this Judge was false and erroneous and this is what triggered Garrison's alleged defamation and I think it's entirely relevant. If you look at the bill of complaint, it's referred to and the Defendant referred to it specifically in his statement of November 2.

Mr. Organ: I'd like to point out, if your Honor please, that Mr. Garrison is not charged with defaming this witness.

The Court: That's exactly what I was going to say. As I understand, Judge William O'Hara is not one of the parties he is charged with defaming. Mr. Garrison's statement, if I remember correctly, referred to the statement by Judge O'Hara and it might have triggered it. I think you can ask him with reference to the statement but I don't believe that you can put the statement, of itself, made by the witness out of the presence of the Defendant, into evidence, unless the Defendant shows there was something derogatory in the statement made by Judge O'Hara, it would

[fol. 441] not be admissible but if he himself, relying on that statement by Judge O'Hara, as you say, triggered the statement on which defamation charges—or press release, whatever it was—on which defamation charges arose, but to read into this record the newspaper report that Judge O'Hara might have made, I think you can ask Judge O'Hara questions and elicit from your questions the information that you might want.

Mr. Gremillion: In the bill of information we have charged that Garrison made statements—

The Witness: I don't know whether the whole thing is brought out by—

Mr. Organ: There is no question pending to this witness. If your Honor please, the witness should be instructed—

The Witness: I say that this thing started off by Mr. Garrison in his statement.

Mr. Organ: I move to strike that. It should not be in the record.

The Witness: Listen, you are not going to shut me up.

Mr. Organ: I move that the Court instruct the witness not to make a speech here. There is no question pending to him. He has no right to make extemporaneous speeches from the witness stand.

The Court: Judge O'Hara, I am sure you realize the [fol. 442] position that I am placed in.

The Witness: Yes.

The Court: In a matter of this kind, quite naturally I have to consider the testimony of each witness. I don't think any acrimonious or recriminatory statements should go into the record, other than I think the State has a right to ask him about this statement and I think that the State has a right to ask him about this statement for the purpose of showing malice. So I think, Mr. Gremillion, by questions and answers to Judge O'Hara, you may develop the facts in connection with it.

The Witness: I think—

Mr. Organ: There is still no question pending of the witness. With all due respect to Judge O'Hara, I don't think he should be allowed to talk.

The Witness: All right.

Mr. Gremillion: I was trying to save a little time and let him read his statement, that's all.

By Mr. Gremillion:

Q. Have you read the statement made by the District Attorney, Mr. Garrison, which was published on November 2, 1962?

A. Yes, I read it.

Q. Are you familiar with it?

A. Well, yes.

Q. Now, the references that he makes in this statement [fol. 443] to you, are they true or not?

Mr. Organ: If the Court please, I think the question should embrace with references he is talking about.

The Witness: I think so too.

Q. "First of all is the attempt made to counter attack by imputing to this office the responsibility for the overcrowded conditions of the Parish Prison." Is that true? Did you say that?

A. Let me see that again because I am a little bit—

Mr. Organ: If the Court please, is it understood that this testimony is only elicited for the purpose of showing malice and is excluded for all other purposes?

The Court: That's right.

Mr. Organ: I originally made a note to our bill of exception that it applies through this entire trial to this point.

The Court: Let me ask you, Mr. Organ, are you going to place it all in one bill of exception?

Mr. Organ: I will place it all in one bill of exception. It was stipulated, if your Honor recalls allowing the stipulation, that all testimony regarding statements which Mr. Garrison made prior to and since the one which is allegedly defamatory is admitted only for the purpose of showing malice, subject to our objection thereto and as covered [fol. 444] by our bill of exception thereto.

The Court: Is that satisfactory?

Mr. Gremillion: It's all right with me.

A. You are asking about this statement:

> "Judge O'Hara makes the fantastic implication that somehow the system of operation of my office has created this condition. The short reply to this untruth is that the Parish Prison was vastly overcrowded the day we were sworn in."

I wish to state that the statement by Mr. Garrison that my statement was untrue is that that statement is false. My statement was true. The overcrowded conditions of the Parish Prison were the direct result of the inadequacies of the District Attorney's office and with the preceding District Attorney's office and which Mr. Garrison did nothing to correct.

Q. Judge, reading a little further, I ask you this question. Mr. Garrison said:

> "Inasmuch as the judges have been the only continuing caretakers of the criminal"—

A. I didn't finish my answer. Excuse me. You thought I did and you had a right to believe I did but I didn't.

Q. Go ahead and finish.

A. "The short reply to this untruth is that the Parish [fol. 445] Prison was vastly overcrowded the day we were sworn in." That statement is correct. It was overcrowded the day they were sworn in but the overcrowded condition was the result of the inadequacies of the District Attorney's office which Mr. Garrison did nothing to correct but he continued those inadequacies in operation. The situation was that Mr. Hubert became the District Attorney when there was a three thousand case overload and he left office with 146 prisoners.

Mr. Organ: I am going to object. What the previous administration did has nothing to do with Mr. Garrison or the truth or accuracy or inaccuracy of this.

Q. Have you finished your answer, Judge?

A. I say the inadequacies of the District Attorney's office, which are still continuing and which we will never correct until they correct themselves, began in previous years and continued through and Mr. Hubert changed the operating

system of the District Attorney's office, cleaned up the backlog and left 146 people in the Parish Prison awaiting trial and the day Mr. Garrison made his speech about all the Judges' vacation or holidays and racketeers, there was 750-some-odd prisoners in the Parish Prison, which made a difference of 600 between the time Mr. Hubert got out and the time of that date that Mr. Garrison made that statement and the 600 was a result of going back to the old [fol. 446] operating methods of the District Attorney's office, which the large increase in volume of cases had outmoded. I am finished.

Q. Judge, Mr. Garrison said this:

> "Inasmuch as the Judges have been the only continuing caretakers of the criminal courts operations over the years, it is pretty obvious where the real responsibility lies for the revised backlog of untried cases."

Is that true?

A. That is absolutely false. The Judges were Judges all the time that Mr. Hubert was there. The backlog was wiped out and the docket was made current and they were also there when the previous District Attorney and the succeeding District Attorney put the backlog right back and here we are today.

Q. Who fixes cases for trial?

A. Well, the District Attorney's office, under the law, must fix the cases for trial. The Judges have no legal right to fix any cases for trial.

Q. Judge, just prior to your retirement, while Mr. Garrison was in office, has he used the same system of fixing jury cases that has been used since you have been in office?

A. Oh, yes, yes, yes.

Q. Now, coming back to the statement, I read this; "Fur- [fol. 447] thermore, I am sure"—do you see what I am referring to, sir?

A. Yes.

Q. (Reading from document)

> "Furthermore, I am sure that Judge O'Hara knows that no district attorney's office in years has pushed more cases to trial than we have in our first six months of office."

Is that true?

A. Well, I don't think that was true, Mr. Gremillion. There was no change in the usual mode. They seemed to be doing just about what the previous ones were doing. The last man that I had in my Court, which was at the beginning of Mr. Dowling's administration, was Mr. Ben Smith who did a remarkable job of moving cases. Since he left there, nobody has competed with what he accomplished.

Q. Let me read a couple of paragraphs further down:

"To go on to another misrepresentation, Judge O'Hara has made the incredible statement that we have pulled our investigators away from the courts."

Is that true?

A. That says that they did not pull the investigators out of the court.

[fol. 448] Q. Mr. Garrison said that you were misrepresenting things.

A. I was not misrepresenting anything. Mr. Smith accomplished these very remarkable achievements with the able assistance of Mr. Sedgebeer, who is still in Mr. Garrison's office and he could never have accomplished what he did without that investigator and when Mr. Garrison took office, the investigator was still in the courtroom and he was a very efficient man and in a very short time, this investigator disappeared and that was the end of the investigator and he was a tremendous help to the trial assistant, who needs help and a tremendous help to the Court.

Q. Let me ask you if I get that straight. Is Mr. Garrison's statement about what you said true then?

A. No, no. The investigators were taken out of the Court. What they were doing, I don't know. I am sure that Mr. Garrison had them doing some very necessary work but they were not in the courtroom.

Q. Now, Judge, I want to show you what I am going to read so we can save a little time right here. On Page 5 of the bill of information, Mr. Garrison says this:

"To go on to another misrepresentation of Judge O'Hara's statement, I am sure that he well knows that we did not throw out the trial preparation system of Mr. Hubert."

[fol. 449] Now, is that true?

A. Well, I have to answer that, Mr. Gremillion, by saying that that is a quibble.

Q. Well, is it true?

A. Now, this is just a quibble there. He had an opportunity when he went in office to use Mr. Hubert's system and he didn't use the system.

Mr. Organ: Excuse me. If the Court please, I move to strike this line of testimony. Mr. Garrison is not obligated to run his office like any prior District Attorney and that is not relevant or material to the issues in this case. This has nothing to do with the case.

The Court: This Court will not consider it as a matter of any obligation on the part of the District Attorney. However, Mr. Garrison in his statement to the press has attributed these things to the Court and to Judge O'Hara.

The Witness: Yes, sir.

The Court: And so I think that since that is in the original bill of indictment, that it was Mr. Garrison's statement and the statement on which the State is relying as being defamatory, I think the question, unless there is a privilege, the question of truth or falsity of any statement that he might have had with reference to the other, would be a material issue. Therefore, my ruling is that it is for the [fol. 450] purpose of showing malice and restricted to that and, of course, I know—and you have to give the Court credit for having some reasonable amount of intelligence—that I will be the man that will have to pass upon this question and I certainly will not consider that Mr. Garrison is under any obligation to adopt any system other than that system which he may apply to the administration of his office.

A. I'd like to continue my answer by saying—

Q. Go ahead, Judge.

A.—that Mr. Garrison can run his office any way he wants to and if he chooses to run it a certain way and that's not the way it should be run, he has got no business blaming deficiencies and crowded dockets on the courts. He ought to say, "Well, this is it and that's the way I want to run it." Don't blame anything on the courts.

Q. Judge, going a little further down, it says—I think the last page. Let me point it out to you. I read you from Garrison's statement of November 2:

> "This is when, to my astonishment, I suddenly received instructions—through Judge O'Hara himself, speaking for the rest of the Judges—that I could no longer spend any money out of fines and fees for anything."

Is that true?

A. No.

[fol. 451] Q. Would you explain that?

A. The decision was made to defer payment until all of the Judges could meet with the District Attorney's office and arrive at some agreeable system, and that did not apply to extradition matters and did not apply to what I termed emergency matters or anything that would hamper the operation of the District Attorney's office or the Court. It simply applied to such things as furnishings—what I might call non-judicial expenses of the District Attorney's office—that they could very well get along without until the Judges had this meeting.

Q. What was the reason for that decision, Judge?

A. Well now, you are asking me a question that requires a rather lengthy answer.

Q. Well, I'd like for you to answer that.

Mr. Organ: We would too; if the Court please.

A. Well, the thing immediately came up when I was presented with a motion from the District Attorney's office to approve payment of a bill for some carpets and drapes and the bill was about $950.00, $960.00—was about $985.00, including the sales tax. That was for carpets for the District Attorney's own office and for a set of drapes for the District Attorney's own office and I thought that that was

a rather extravagant expenditure and I did not wish to sign it and I didn't sign it. So, as it happened—but we have to [fol. 452] go a little further than that—I am having some difficulty getting my thoughts together. You'd have to go back to 1959 when this fines and fees statute was enacted.

Q. Judge, let me ask you this: Did you tell the District Attorney why you did not approve this bill?

A. Yes, I told him we were not going to approve any such expenditures, as I described, until all the Judges could meet and the District Attorney could meet. Now, one reason why that was necessary was under the fines and fees statute, one Judge could approve an expenditure but eight Judges were required to refuse to approve an expenditure and no Judge could make any rule for himself without taking himself out of the act, you might say. In other words, suppose I told the District Attorney's office, "I am not going to sign for any expenses unless you consult me first," which wasn't done in this carpet and drape incident, you see. The money was spent, the goods were delivered and then they came in and said, "I wish your approval of this." So that put the Judge in a very serious disadvantage. Now, if I had said I will not approve anything unless I am first consulted, the District Attorney could say, "Well, we are going to continue operating this way but we are not going to ask Judge O'Hara to approve these things." I would be taking myself out of the picture and I would be unfair to the other Judges.

Q. Did you tell the District Attorney himself why you [fol. 453] refused to pay this motion for the bill for the rug?

A. Oh, I told him that I thought it was an extravagant expenditure; that it was extravagant taste they were indulging in. Yes, I told his assistant, I didn't tell Mr. Garrison.

Q. Did you ask him to give you some proof of the value of it?

A. Well, after I told Mr. Barry, I believe it was or some assistant in the office, that I would not sign this bill and that the Judges were going to wait—that nothing would be signed until all the Judges came back—after I stated that,

some time later Mr. Garrison came into my office and he asked me if I would not sign this bill.

Q. What did you tell Mr. Garrison. That's what I want to know.

A. All right, I am going to tell you immediately but I am just going to state that this sort of an operation put the Judges at a disadvantage. I didn't want to sign it but I was sympathetic to the man who had sold this merchandise. He couldn't take it back so I told Mr. Garrison, I said I would sign it, provided Mr. Garrison got a statement or a certificate from some competing firm, who would certify or state that he had seen the merchandise and he had inspected the services and that in his opinion the District Attorney's office had got value received and that that would be filed in the [fol. 454] record. I at least wanted to show that we got our money's worth. Anyhow, that was the best we could do. Now, Mr. Garrison told me that that would be a very simple matter to do; would be no trouble about it at all and that he would proceed to do that and that was the end of that incident.

Q. Were you ever furnished that proof that he promised you?

A. No, I never was.

Q. Was that prior to the time you went on your vacation?

A. Yes. I thought from the way Mr. Garrison told me how easy he could do that, I thought it would be back in a couple of days and I really looked for him but he didn't come back and after that I decided I was going to take about ten days or two weeks off and I went off. It was unsigned and I had never been given the document that I had asked for.

Q. When you returned from your vacation, was it presented to you for payment with the proof you requested?

A. Was it presented to me?

Q. Again. Do you understand my question?

A. No, I didn't.

Q. I said when you came back from your vacation, was the bill and the proof you requested from Mr. Garrison [fol. 455] presented to you?

A. Oh, no, no, no.

Q. Do you know of your own personal knowledge what happened to it?

A. Well, I don't know whether I can say yes or no. I just know from—of course, you can look at the record and see that Judge Wimberly—

Mr. Organ: If the Court please, the witness has said he doesn't know. He can't testify about what the record shows.

A. Will you permit me to correct myself? I do know because it's a matter of public record in this Court and I could take judicial knowledge of it under the law.

Mr. Organ: If your Honor please, the witnesses cannot take judicial knowledge. Judicial knowledge is for your Honor to take.

A. It was for me to take as of that moment. I was a Judge and I could take—excuse me.

The Court: I believe he said previously perhaps he did not know but he afterwards said he did know, as a matter of record. I think he could testify what the record of the Court would reflect.

Mr. Organ: If he has seen the record, I agree. He didn't indicate that he had seen the record.

A. I did see the record, incidentally, also and—

[fol. 456] Q. Was it approved?

A. It was approved by Judge Wimberly on September 10.

Q. Now, after your conversation with Mr. Garrison in which you asked him for this proof of value, were you ever presented with that motion for approval again?

A. Never.

Q. Judge, you are a graduate of a law school, are you not?

A. Yes, I graduated from the Tulane University Law School in 1915.

Q. I believe you said you were a Judge for how long?

A. I was a Judge of Section "A" from May—about the 5th—1932.

Q. Judge, were you a former Assistant District Attorney?

A. Yes. I graduated in 1915. Around 1917 or '18 I became an Assistant District Attorney for the Parish of Orleans and while I was serving and after about two years, I was appointed Assistant United States Attorney for the Eastern District, in charge of the criminal docket and after about two years, I resigned that job and returned as Assistant District Attorney for the Parish of Orleans again and I served about four years and then I resigned and [fol. 457] then entered private practice.

Q. Judge, you were serving in Division "A" from the time Mr. Garrison took office until your retirement in September?

A. Yes.

Q. Do you know of any racketeering influences on the part of yourself or any of the other Judges of the Criminal District Court?

A. No, positively not.

Q. Do you know of any actions on your part and other members of the Judges of the Court by which directives or messages were sent to the District Attorney on how to operate his office?

A. No.

Q. Did either you or the Judges of the Criminal District Court who are your associates, use their vacations as a racket?

A. No.

Q. Did you serve for your son for a period of time after he took over Division "A"?

A. You mean did I substitute for him?

Q. Yes.

A. Yes, I substituted for him.

Q. By whose order was that?

A. The Supreme Court.

[fol. 458] Q. Do you recall the period of time?

A. Well, I was appointed for an indefinite period of time but I actually served just about a week because my son was physically able to get back on the job. He wasn't quite able but he came back on the job and so that terminated my service as a substitute Judge.

Q. Was that after the statement of Garrison made on November 2 about the Judges?

A. Oh, yes.

Q. Now, has that statement tended to ridicule the Judges of the Criminal District Court?

Mr. Organ: I am going to object to that unless this witness testifies to facts which form a basis for his having knowledge of this.

Mr. Gremillion: That's all I expect him to testify to.

Mr. Organ: To facts, not as to what he thinks or his impression.

The Court: I think that is practically the same question that arose that I passed on yesterday afternoon, to elicit facts, Mr. Gremillion, and show the facts from the witness to his knowledge.

Mr. Gremillion: All I am asking him is for statements.

The Court: Suppose you ask him that.

[fol. 459] A. I can tell Mr. Gremillion that I understand his question.

Q. Do you know of any facts or factual situations whereby the statement made by Mr. Garrison on November 2 has subjected the Judges of the Criminal District Court to hatred, contempt and ridicule?

A. Well, I know quite a few.

Q. Tell us about it.

A. That's all I heard.

Q. What did you hear?

Mr. Organ: I object to what he heard. That's strictly hearsay, unless it was stated in the presence of the Defendant.

The Court: I imagine what Judge O'Hara means by saying what he heard is what people said to him.

The Witness: Yes, sir.

The Court: And would show their action. The same ruling I made yesterday would apply to this.

A. No later than a few days ago, I was talking to a very prominent business man in the community, whose name I could mention.

Mr. Organ: That's clearly hearsay, if the Court please.

Mr. Gremillion: It cites a fact that he heard. That comes within the rule. I know of no other way I can show it, [fol. 460] unless he tells me what he heard, as to what the public reaction is.

The Court: I don't think that you can go into details of the conversation that he might have had which, of course, would be hearsay. You could ask him with reference to whether or not what he has heard has caused, as a public reaction to these charges, for the purpose of showing defamation and I think that he can testify to that because there would be no other way in the world that a man could show any injury, other than what the public reaction has been to the statement.

Mr. Organ: If the Court please, it seems to me that they want to show public reaction to this was adverse to the Judges' interests and in that case they should bring public witnesses from the public to testify that their impression of the Judges were lowered.

The Court: That would be strictly a question of opinion. You know that evidence wouldn't be admissible. These Judges can show what the reaction has been to them—the reaction of the public. I recall that on yesterday I made the same ruling. If you want to object, reserve a bill of exception.

Mr. Organ: We reserve a bill from the ruling of the Court at this time and we ask that it be Bill of Exception No. 12. We ask that it include the question, we ask that [fol. 461] our objection to it and the reasons for our objection, the Court's ruling, the bill of information and the entire record be made part of the bill of exception.

The Court: In connection with that, the Court will make this statement at this time. This witness has a right to show, for the purpose of proving whether or not the statement was defamatory to the extent as set forth under the legal definition of defamation. He has a right to say what the public reaction was to that—to these statements—for the purpose of proving—there is no other way he could prove that he was exposed to hatred, contempt or ridicule or to deprive him of the benefit of public confidence or

social intercourse. I presume—wait just a minute, let me finish my statement. This evidence, the Court holds, is admissible because it would be within the knowledge of this party as to whether or not that has injured him and there would be no other way in which injury could be proven.

Mr. Organ: If the Court please, we take exception to injuring him. We are not charged with injuring him and what other people think of him as a result of this is not an issue in this lawsuit. We are charged with defaming the eight present District Criminal Court Judges.

The Court: I overlooked that fact. I will sustain your objection.

Mr. Gremillion: I call this to the Court's attention: [fol. 462] That he actually served by assignment of the Supreme Court after this statement was made, for his son.

The Court: They are not charged with defaming him. Just strike the question and answer and the objection.

A. May I answer the question? All right, ask me about the other Judges.

Q. The Court has sustained the objection, Judge.

A. Oh, all right.

Mr. Gremillion: At this time we tender the witness.

Cross examination.

By Mr. Organ:

Q. Judge O'Hara, is it a fair statement that you were most put out by Mr. Garrison's implication, if there was one, that the backlog was due to the Judges, because you served as a Judge since 1932?

A. Absolutely, yes.

Q. And you do hold animosity for Mr. Garrison?

A. Well, yes, certainly.

Q. Now, isn't it a fact, Judge, that Mr. Garrison was in office only a few months when this entire matter came to a head and it would have been impossible for him in those few months to have substantially reduced the backlog, no matter what type of procedure he took?

A. You are misstating and misrepresenting the situation in your question.

[fol. 463] Q. I am just asking you, Judge.

A. He was not there long enough to reduce the backlog, he was not. He was there long enough to put the system into operation that would reduce the backlog within the course of some reasonable time.

Q. Putting a system in that you feel was the proper system, isn't that so, Judge?

A. I will answer your question. Just have a seat and relax.

Q. I am relaxed.

A. Put in the system that Mr. Hubert had demonstrated would clear up the backlog. That's a fact like the fall of Rome and the American Revolution. It's been demonstrated as a fact, so that's the answer.

Q. Isn't it also a fact that you don't know what system Mr. Garrison was putting into operation to reduce the backlog?

A. It is not a fact. I do know.

Q. Will you tell us what system that was then?

A. It was the same old system that's been building up this backlog since 1940 and Mr. Hubert came along and cleared it up and gave us a breathing spell for about four years and now we are back where we were in 1953.

Q. Judge O'Hara, then it is your testimony that the operation of the District Attorney's office is what caused [fol. 464] the backlog?

A. Absolutely.

Q. Nothing else caused this backlog?

A. No.

Q. Did you say that two weeks ago Friday, in the presence of Mr. Trent and I?

A. No, I don't know whether I did or not but you didn't ask me all these questions. If you had, I positively would have told you that. I said it in 1953, I said it in 1962 and when I made the statement and I am saying it right now. If you had discussed that, I would have positively told you.

Q. Isn't it a fact that in 1953, to alleviate the backlog they created two new judgeships in this Court?

A. No.

Q. When did they create those judgeships?

A. Oh, that came along a little bit later.

Q. A little bit later?

A. Yes.

Q. And isn't it a fact that that is what substantially reduced the backlog at that time?

A. That helped but it was not what reduced the backlog. It was the operating method of the District Attorney's office. They could have fifty courts around here, if they don't change their operation, they are not going to get to [fol. 465] first base.

Q. Isn't it a fact, Judge, that you were annoyed with the District Attorney's office when Mr. Garrison went in because he didn't adopt the system that you felt he should adopt?

A. I was very much disappointed that he did not put the system in that Mr. Hubert had in, which he was so familiar with.

Q. Now, just what system is that, Judge? Tell us.

A. Well, it's very—it can be long or it can be short.

Q. Just give it to us any way you want.

A. Well, you see, I have here—which I am not trying to force into this record—a statement that I made in 1953, in which I said that if the District Attorney's office would institute an operation which would process all felony cases as soon as they reached the District Attorney's office, and if they would do it under these conditions, that it would be understood that the people in charge of that system would not be called upon to do anything else except that one job. I said that those two things—if those two things were done—in 1953 I said it—that in my opinion it would produce results, and generally it consisted of some Assistant District Attorney, some good stenographers and some investigators, who would process the case as soon as it [fol. 466] came in the office, and then they could evaluate it, they could throw it out if it was untriable or could carry it through and as a result of that, the trial assistant would have a trial brief and not a mere police report. That's the

system that Mr. Hubert put into effect. That's what he put into effect.

Q. So Mr. Hubert put your system into effect.

A. He happened to do so. When Mr. Hubert was elected, he made a study of the situation and he decided to try it out and the success of it is a matter of history.

Q. And you are a champion of that system which you originated?

A. I am a champion of that system or something that would be equivalent to that system and I say this, that it was not knocked down because it would have to be stipulated that the man in charge of that operation would have no other duties. If he had any other duties, it wouldn't work.

Q. Didn't you tell me about two weeks ago that a particular man named Fontenot was largely responsible for that operation working?

A. I positively did and that was what Mr. Garrison told me. I said, "What about this system that Hubert had?" and he said, "I do not have a Fontenot."

Q. And you agreed with him?

A. And I positively agreed with him that he did not [fol. 467] have a Fontenot but I did not agree with him that he couldn't put the system in and I say that Mr. Fontenot is competent and able and dedicated to that job and was responsible for the good results that Mr. Hubert produced.

Q. So it's fair to state then that you tried to get Mr. Garrison to use the system which you originated?

A. No, I didn't try. I just asked him about it, but I was very sincerely hopeful, for the good of the community, that he would do exactly that.

Q. Now, what is your testimony with respect to the operation of the District Attorney's office just prior to Mr. Garrison taking over?

A. Well, unfortunately it had returned to the old traditional method, with the exception that the District Attorney gave each trial assistant an investigator, who was quite some help but it was not enough.

Q. Now, Judge, it's a fair statement, is it not, that the only criticism you have of the District Attorney's office is that it didn't adopt the system which you originated?

A. Mr. Garrison's administration, that is what you are talking about?

Q. Yes, sir.

A. That is the only criticism that I have to make of the office. The personnel are very competent. They are very [fol. 468] hard working and if they would just have the proper operating conditions, it would be a very good thing. The only criticism I have of the office, as you say, is that it did not install this system which, of course, is very vital.

Q. How long was Mr. Hubert in office, do you recall, before he used the system which you suggested to him?

A. I think he went right into it.

Q. It could have been some time, say a year?

A. No, it wouldn't have been—couldn't have been a long time, no.

Q. And you were annoyed with Mr. Garrison because he didn't put that system in immediately?

A. I positively was.

Q. Now, Judge, getting to the conversation you had with Mr. Barry, at that time did you not tell Mr. Barry that you were not going to approve any expenditures for vice investigations and that you had stopped Johnny Grosch and you were going to stop Garrison just like you stopped Grosch in vice investigations?

A. That is a lie. I told Mr. Barry no such thing.

Q. Did you talk to Mr. Barry about John Grosch's attempted investigation?

A. I did not. I did not. I had nothing to do with Mr. Grosch's attempted investigation, either with starting it or [fol. 469] stopping it and I didn't know Mr. Grosch was in existence and I made no such statement and I would just like to bring that a little bit further. I want it understood very definitely that I made no such statement to Mr. Barry.

Q. Did you talk to Mr. Barry about vice investigations at all?

A. I did not and I would like to go on and carry that a little further. At the time that I said that the Judges were

not going to sign any more of these requests, I did not know that the District Attorney's office was using any money for undercover work on Bourbon Street or any other place. I did not know that and I did not find it out until a little bit later and I am not finished yet. It so happens—speaking of Mr. Johnny Grosch—it so happened that in 1953 the Supreme Court held in a case involving Mr. Grosch, that Mr. Grosch did not have any police power; he could not perform any police function and that was based on Section 16 of Act 301 of 1946 which says that no one, no officer, no department, nobody in the City of New Orleans, has any legal authority to perform any police function except the Superintendent of Police or members of the Police Department acting under the supervision of the Police Superintendent. Just a minute. If I had known that any such request were made and the money was so used, I would have told the District Attorney's office about [fol. 470] it and I would have shown them the law and I think that I would have changed the whole course of events. I don't think that we would be here today because I could have convinced them that it was an illegal expenditure of those funds and that was an illegal act for the Judge to allow those funds. I happen to know that.

Q. Are you finished?

A. No. I happened to know that. It was purely an accident that I knew that. I knew that since 1953 but it was not generally known.

Q. Are you finished?

A. But if I had known that Mr. Garrison was using those funds or if he had ever asked me for any of those funds, I would have refused to give them to him and I would have told him why and I think I would have convinced him that I was correct.

Q. Now, Judge, that's your opinion on what the law is, correct?

A. Well, I read that in the book. It's not an opinion, I read it in the book. Of course, you got to follow it.

Q. Then your opinion is not what you just told us?

A. No, I am quoting from the law.

Q. All right.

A. I am quoting from the law but the thing that directed [fol. 471] me to that was this Grosch case in 1953.

Q. All right. And you didn't talk about it to Mr. Barry, about the Grosch case?

A. I did not. I did not. If I did, it was some time later but I didn't discuss that because I knew nothing about it —this operation.

Q. Then your testimony is that you certainly would have disapproved of any funds for vice investigations, isn't that correct?

A. Let me be sure I understand your question because I can't answer it otherwise.

Q. Well, your testimony is, I believe, that you would have disapproved of any use of funds for vice investigation.

A. Absolutely I would have because I was compelled to do that.

Q. Isn't it a fact that in the 1953 Grosch case, Grosch was not a policeman?

A. He was a Criminal Sheriff and the Supreme Court held he was not a police officer and he had no legal authority to perform any police function because of this act, which put all the power in the Police Department.

Q. And don't you know, Judge, that there are policemen assigned to the District Attorney's office as investigators? [fol. 472] A. I certainly do know exactly that and I also know that we are talking about money. We are talking about dollars. We are not talking about people. We are talking about money that belongs to the District Attorney's office that must be used for purposes that pertain to the District Attorney's office and cannot be used otherwise and it is not Police Department money. We are not talking about people, we are talking about dollars.

Q. This disapproval of this bill for $985.00 for rugs and drapes, etc., that disapproval that you gave was the first time that you had gotten concerned about this money, the first time you had gotten concerned about the expenditures. You weren't concerned about expenditures of those funds during the previous administration, making sure that there were bids and estimates and all that, were you?

A. Yes.

Q. You were?

A. Absolutely. When Mr. Dowling was there, it was my belief that it would be necessary to change that system, and if Mr. Dowling had been reelected, he would have been confronted with the same thing, as far as I was concerned.

Q. But the truth is that you weren't at all particular about what you signed for Mr. Dowling?

A. Oh, no, that's not the truth at all. I was very much [fol. 473] concerned about it and I was very much concerned about the fact that the law had been changed and that I couldn't rely on the City any more. There were three people checking on it prior to 1959 but the 1959 law cut that down to two people, the Judge and the District Attorney, and I was very unhappy about it.

Q. And is it your testimony that you held Dowling's administration to the same degree of strictness that you held Mr. Garrison?

A. I would say so, yes, but with this exception: When Mr. Garrison was there, we were approaching the point where we were going to get a new working arrangement.

Q. Judge O'Hara, I hand you a photocopy—

Mr. Gremillion: May I look at it, please, sir.

Mr. Organ: Yes (presenting document to Counsel).

Q. I hand you photocopy of what appears to be a motion signed by you, authorizing the previous District Attorney to purchase a Pontiac automobile for $3,385.00, without bids or without advertisement, and ask you if your testimony is that that is holding the Dowling administration to the letter of the law on bids and advertisements?

A. Well, I would say no but that's an example of why I was so unhappy about this system and why I was convinced that it was necessary to get some new system. The Judges were at a very serious disadvantage. They had [fol. 474] no way of knowing whether the District Attorney's office needed an automobile or didn't need an automobile or whether they needed a filing system or didn't need a filing system. We had to rely on their word for it.

Mr. Gremillion: Just a minute. If your Honor please, I call attention to the fact that the exhibit he has shown to the witness was not only signed by him but by another Judge.

Mr. Organ: We'll get to him. Put him on the stand.

The Court: That exhibit hasn't been offered in evidence.

Mr. Gremillion: Signed by two Judges, Wimberly and O'Hara.

Q. Isn't it a fact that you knew that on matters of merchandise over $1,000.00 there was supposed to be bids and supposed to be advertisements before it was bought under a public contract, when you signed that?

A. Well, I will have to plead ignorance of the law. Judge Brahney called that to my attention. He called that to my attention later and I have to plead ignorance of the law on that but I am saying that is an illustration of what we are up against. We had to take the District Attorney office's word for whether they needed the car or didn't need it and he said he needed it and we signed it.

[fol. 475] Q. So you took his word that he needed an automobile?

A. Absolutely.

Q. Without bids?

A. Well, I did, yes. Yes, I did; there is no question about that.

Q. And without advertisements?

A. Without advertisements.

Q. And when Mr. Garrison presented you with a nine hundred and some-odd dollar bill, under the legal minimum —you refused to approve that, even though he said it was necessary?

A. I still didn't know that law but that's not the reason why I refused to approve it. I refused to approve it because I thought that it was an unreasonable expenditure for such items.

Q. You read the papers, Judge? You read the daily papers, the States and Picayune?

A. Yes—well, just about like everybody else. I don't read every line or word but pretty much.

Q. Didn't you know at this time that the District Attorney had been making numerous raids on Bourbon Street and Canal Street joints?

A. Well, I did, yes. I knew that he made some but there was nothing to indicate that any undercover work was [fol. 476] being done at that time and I didn't know what the basis of those raids was. You will so realize that Mr. Garrison was trying to keep very secret the matter that he was using these undercover people. I saw where there was one or two raids but I didn't know they were based on some undercover clients or some undercover disclosures. I did not.

Q. Do you consider a Cadillac automobile more extravagant or less extravagant an expenditure than nine hundred some-odd dollars worth of rugs and drapes.

A. Well, I will tell you that I think that the Cadillac automobile was quite a piece of extravagance.

Q. Well, Judge, I hand you a motion, which indicates that you signed it, authorizing the payment—

A. I have signed it and I didn't like it and I'd like to use the expression that's on my mind but I can't, out of respect for the Court. I didn't like it a bit. That's what we were up against and that's why we had to change the system.

Q. Mr. Garrison was not the District Attorney that bought the automobile?

A. He was not. He is still using it and is having it repaired and he is doing very well with it. He hasn't turned it in at all. He is still using it.

Q. All right, Judge. I have another motion showing some $154.00 expenditure to B. A. Fortier, $332.00 expendi- [fol. 477] ture for Palfrey Rodd-Pursell Company and $12.00 expenditure for Joseph Maes, which appears to be signed by you and I will ask you, Judge, is there is anything in that motion or attached to that motion that indicates—would you like to see it, Mr. Gremillion?

Mr. Gremillion: I have been giving you that courtesy. I would appreciate it.

Mr. Organ: I will be glad to give it to you, Mr. Gremillion. Your wish is my command.

Mr. Gremillion: God bless you.

Q. My question to you, Judge O'Hara, is there anything in this motion or attached to this motion that shows what the $12.00 to Mr. Maes was for?

A. I would say no. I don't see anything there.

Q. Would you please take time to read it and see if there is anything in there that indicates what it's for or why it should be paid out of fines and fees?

A. I got to read it again. Well, it says here that it's necessary to pay expenses incurred in purchasing identification cards, credentials and leatherette holders for members of the Orleans Parish Grand Jury and the District Attorney's office so I think that's what it was all about. That was in the motion.

Q. But it also says, does it not, Judge, that Richard A. Dowling, District Attorney for the Parish of Orleans, paid [fol. 478] to B. A. Fortier the sum of $154.00, to Palfrey Rodd-Pursell Company, $332.00 and Joseph Maes, the sum of $12.00. There is absolutely nothing to show who or what Joseph Maes is or no bills in connection with it?

A. No, except I knew he was connected with the District Attorney's office.

Q. So you knew he wasn't selling anything to the District Attorney's office?

A. Oh, positively, I knew that he wasn't selling anything, not that I know of. If he was selling anything to the District Attorney's office, it was news to me.

Q. So you approved the payment of $12.00 to somebody in the District Attorney's office without any idea whatever what it was for?

A. Oh, yes, I did.

Q. On the word of the District Attorney?

A. On the word of the District Attorney and I am happy that you are bringing all this up because it shows exactly why this system was so unsatisfactory and should be changed.

Q. But the change that was taking place did not take place and was not sought to be taken place until Mr. Garrison had already made some very successful raids on B-joints and strip joints in the City of New Orleans?

A. Well, yes, and I did not know he made the raids on [fol. 479] the basis of any undercover evidence. I was

completely in ignorance of the fact that he was using this money to pay undercover people. It was not in my mind. There was no connection whatsoever between the decision to defer the payments and any vice. I have never been, as a Judge, in favor of vice. I have done everything that I could to assist in the suppressing of it and in keeping it to a minimum. When Mr. Garrison came into my office to ask me if I wouldn't please change my attitude toward the carpets, he did not say anything to me about his operations being hampered. I didn't hear a word from the District Attorney's office at that time and I didn't hear anything until later that they were using the money and later than that Mr. Garrison attempted to juxtapose two things that had no connection whatsoever. One of those things was the deferment of my approval and the other thing was vice. There was no connection between those things whatsoever. It came a long time later and the statement that there was such a connection is an absolute falsity.

Q. Connection with—Mr. Garrison used the word connection?

A. Yes, he said that they—he didn't use the word connection but he said the Judges were interested in suppressing and stopping his investigations which were vice and shows that the Judges were in favor of vice and they wanted to stop him from investigating vice. No such thing [fol. 480] was true.

Q. Didn't you just testify that you were not in favor of the District Attorney's office investigating vice?

A. I did not say any such thing.

Q. I misunderstood your testimony then.

A. I said that the District Attorney's office had no legal authority to use undercover people to detect vice. They had no such legal authority and as a Judge, I could not legally approve funds for any such purposes.

Q. But you did not seem to be reluctant to approve a $3,385.00 automobile, which was definitely illegal, without a bid and without an advertisement?

A. Apparently I was not reluctant but as a matter of fact, I was quite reluctant.

Q. All right, Judge.

A. I was quite reluctant.

Mr. Organ: In connection with the testimony of the witness, we offer and introduce in evidence the motion for the $3.385.00 automobile and mark that as "D-1," the motion authorizing the purchase of a Cadillac at $6,122.07 and mark it as "D-2," and the motion which makes a payment to Joseph Maes in the sum of $12.00 and mark that as "D-3."

(Thereupon, the documents described were marked respectively "D-1," "D-2" and "D-3" for identification and filed in evidence.)

[fol. 481] Q. Judge, do yor now how much was sought to be spent by the District Att ey's office for undercover vice investigation?

A. No, I do not. I didn't know anything about it and I wish I had. I think I could have clarified the whole situation at that time.

Q. Now, you have stated that you are very familiar with the law.

A. Some law, yes. I was accidentally very familiar with that law. I said that.

Q. Do you know of any law governing district attorneys?

A. What?

Q. Do you know of any law governing the District Attorney of Orleans Parish that specifies that he is not authorized to make payments out of the fines and fees fund for undercover vice work?

A. In those words?

Q. Yes, in those words.

A. No. The law says that he can only use this fund for purposes that pertain to the District Attorney's office. The 1946 law says undercover work does not pertain to the District Attorney's office.

Q. The 1946 law? What law is that, Judge?

A. I just quoted the law. That is the law that applies [fol. 482] to this situation. That is the law which says nobody but the Police Department can perform any police function and in addition to that simple statement, the law specifically says that anything that relates—it specifies prostitution as a police function that only the Police De-

partment can perform and consequently I say there is no room for quibbling about it. It's written down in that law, prostitution—everything that pertains to prostitution is a police function, to be performed by the Police Department, which means Mr. Garrison is out, Mr. Grosch was out, everybody and anything was out except the members of the Police Department. Now, I am not saying that Mr. Garrison didn't do a very good job on Bourbon Street. He did a very good job but a Judge is not privileged to think like the public thinks. The public can say, "What do we care about these technicalities," but the Judges have to care about these technicalities.

Q. What was the citation of that law that you are talking about?

A. The law I just said, Section 16 of Act 301 of 1946, which was enacted by the Legislature when they were rewriting the charter of the City of New Orleans, and that law was carried in to the present charter of the City of New Orleans by general reference that they were retaining everything that—

Mr. Gremillion: Just a minute. I understand that an [fol. 483] Assistant District Attorney is being called on to furnish help in this case because I just personally saw Mr. Trent ask Mrs. Korn, an Assistant District Attorney, to go get a book and bring it in here. Your Honor specifically said no assistant—when he recused the District Attorneys—no assistant could aid the District Attorney because if they did, they would be in violation of the law. They are not supposed to practice criminal law. That's in the Constitution and I ask this Court—I regret very much having to do this but I ask this Court to instruct defense Counsel and the Defendant to use only the defense Counsel and none of the existing facilities of the District Attorney's office because if I catch them doing that again, I am going to charge them.

Mr. Organ: Going to charge whom?

Mr. Gremillion: I am going to charge whoever is doing it.

Mr. Trent: And what are you going to charge me with, Mr. Attorney General?

The Court: Order in the Court. Sit down.

Mr. Trent: May it please the Court, I will run the errand, if there is any errand run.

The Court: I want order in the Court.

Mr. Organ: I think that was an attempt to intimidate Counsel—just an attempt to intimidate Counsel.

[fol. 484] The Court: Continue the examination.

Q. Does Section 16 of 301 have any reference at all to the District Attorney's office?

A. No, it applies only to the Police Department and it was first brought to my attention by the Supreme Court.

Q. Now, the District Attorney is a State officer, is he not?

A. Yes, he is a State officer.

Q. And his duties are governed by the Louisiana Revised Statutes, are they not?

A. Absolutely.

Q. Now, are you aware of the Louisiana Revised Statute 157.1?

A. I know it backwards and forwards.

Q. Would you tell us if the title of that is "Attorneys General and District Attorneys to make inquiry when informed of offenses"?

A. Absolutely and says inquiry—open hearing by resort to the Grand Jury.

Q. Don't you know as a matter of fact that an open hearing in attempting to stamp out vice would be far less effective than raids such as he was doing?

A. I certainly do know that. I do know that you had to attack this situation on Bourbon Street by the use of undercover people. I know that perfectly well and that [fol. 485] was the only way that Mr. Garrison could do it successfully, I do know that, I know that perfectly well, but I say that he usurped the function of the Police Department.

Q. That's not so very serious; you can't charge him with anything?

A. It just don't happen to be the law. He couldn't use an open hearing. The only thing Mr. Garrison could have done legally was to call on the Police Department and ask

them to use undercover men. It sounds like Twiddledee and Twiddledum but that happens to be the law.

Q. Isn't it a fact that you are just playing on technicalities at the very best?

A. It is a pure technicality; a pure technicality which is binding on the Judge and I say if I had known about it, I would have called that technical situation to the attention of the District Attorney's office and I believe I would have succeeded in convincing him that that technicality was binding on them and that they should proceed in some other way.

Q. Now, you never actually talked to him about that?

A. I actually did not.

Q. Now, Judge, I have two other motions. These appear to be copies of signed motions by—

Mr. Gremillion: May I see those, please?

[fol. 486] Mr. Organ: Sure (presenting documents).

Q. I hand you one motion which appears to be a copy signed by six Judges, including yourself, of what appears to be a payment or advance payment of expenses for former Assistant District Attorney Abraham Kleinfeldt to go to Northwestern University Short Course of Prosecution at Evanston, Illinois. It shows a total expenditure of $705.00. Do you recognize that?

A. Yes.

Q. This is a photostat of the original record.

A. Yes, sir.

Q. Does that not show that it is stated in that motion that that was an eight day trip?

A. Yes, it does.

Q. Do you happen to know, Judge, that that is only a four day school?

A. I do not.

Q. Did you make any inquiry when it was presented to you?

A. I did not.

Q. Did you not feel it was your duty to make such inquiry?

A. I did not because the District Attorneys have been sending these fellows off to these schools for a number of

administrations and we thought it was a good idea and I [fol. 487] didn't know whether it was four days, eight days or what it was.

Q. Now, it also shows $136.00 was paid for hotel during that period, does it not?

A. Yes.

Q. If my mathematics is correct, that is $17.00 per day.

A. Well, I'll take your mathematics. I just can't concentrate on that right now.

Q. And $120.00 for food for those eight days?

A. Yes.

Q. And if my mathematics is correct again, that is $15.00 per day?

A. Yes.

Q. And that does not include $25.00 for tips?

A. Well, no. That's what the document says, that's it.

Q. And does not include $5.00 miscellaneous, which was to be itemized on return?

A. Well, that's correct. That was the general understanding about these expenditures. There was no way to know in advance just what would be spent and the routine was that after the trip was over, they would file with somebody in the District Attorney's office and with the City of New Orleans, bills. I repeatedly said, "What are you fellows [fol. 488] doing?" and they said, "Don't worry, we are furnishing receipts and bills and all that sort of thing." They'd get a certain amount of money. They may not spend it all but they were called upon, after making any trip out of town, to come up with these bills to verify all the items and I assumed that that was done. I'd have to go chasing around and into the District Attorney's office and the City records and everything else and it was a question of honesty and integrity of the District Attorney's office, which I had absolute confidence in, including Mr. Garrison's honesty and integrity.

Mr. Organ: In connection with the testimony of the witness, we offer and introduce the document just identified and mark it "D-4."

Mr. Gremillion: Which one was that?

Mr. Organ: That was Abraham Kleinfeldt.

(Thereupon, the document described was marked "D-4" for identification and filed in evidence.)

Q. I hand you another document which appears to be signed by six Judges, including yourself, and which appears to pay Burton G. Klein's expenses toward attending the Practising Law Institute in the City of New York for practically eight days in July of 1961, and ask you if you recall signing that?

A. Well, yes, I recognize the signature and I am sure [fol. 489] that this is a photostat of the document that I signed.

Q. Now, Judge O'Hara, did you determine before signing this, how long that Practising Law Institute lasted?

A. No.

Q. You didn't know that it only lasted four days?

A. I did not.

Q. And you didn't ask anyone?

A. And I didn't ask anybody.

Q. That appears to show expenses for hotel of $166.23 for those eight days, which is in excess of $20.00 per day, is it not?

A. Yes, if you say so.

Q. And it shows food at $157.15, which is in excess of $19.50 a day?

A. Yes.

Q. And that does not include tips, which are shown on here at $54.00?

A. That's right. Everything you see on there is correct.

Q. Now, it also shows a $75.00 expenditure for public relations. Would you tell us what explanation you got for the $75.00 expenditure for public relations?

A. No, I didn't get any. I didn't get any explanation of it. I didn't ask for any. I assumed that they would file all the proper documents to verify all of their expenses and when [fol. 490] the District Attorney's office said this is it, I signed it.

Q. Now, is it your opinion, Judge, that the law prohibits the District Attorney from having undercover investigators for vice and using fines and fees moneys for this but does

not prohibit him from spending $75.00 in New York for public relations? Is that your opinion?

A. Well, no. I wouldn't say that's my opinion. I just don't know what he means by public relations. I don't know. All I know is that every administration, from Mr. Darden's time, was sending these assistants—some of them went to New York, some of them went to Chicago, and Judges were approving the money to send them there.

Mr. Organ: In connection with the testimony of the witness, we offer and introduce this as "D-5," the document just identified.

(Thereupon, the document described was marked "D-5" for identification and filed in evidence.)

Q. Now, Judge, I hand you another document, which appears to be a motion signed by you, along with four other Judges, and it appears to be a motion to pay Malcolm G. Mundy's expenses for transportation for attending Practising Law Institute for eight days in July of 1961 for a total of $679, total payment, and ask if you can identify that?

[fol. 491] A. Yes, I identify this as an authentic copy of that motion and is signed by the Judges.

Q. Now, does that not show that the room for eight days was $17.00 per day?

A. Yes; you can just tell me it was.

Q. And also shows that food for eight days was at $15.00 a day?

A. Yes, I would say so.

Q. Does it also show a charge of $75.00 for public relations?

A. Yes.

Mr. Organ: In connection with the testimony of the witness, we offer and introduce the document just identified as "D-6."

(Thereupon, the document described was marked "D-6" for identification and filed in evidence.)

A. And it also shows just exactly what I am talking about, which was a very unsatisfactory operation, that the

Judge was put in the position of having to rely upon the District Attorney's office and, relying upon the District Attorney, signed these and approved these expenditures.

Q. Aren't you also aware, Judge O'Hara, that Mr. Garrison sends his assistants to these schools for almost half [fol. 492] of the cost of these previous administrations?

A. No, I didn't see it but I wouldn't be a bit surprised if that bill couldn't be reduced when they come back and tell you this is what we spent. Over the years I have been very much concerned about whether or not when these people—police officers and assistants—return—that they file with the City or with the proper authorities all of the supporting documents. I have made that inquiry repeatedly from time to time, because I never saw any supporting documents but I was very, very much interested in how this thing was being handled and I was always informed that the supporting documents were properly filed.

"Q. Now, Judge O'Hara, you are familiar with the Executone system installed in various courtrooms, which is the very thing you are having so much trouble with?

A. I had one in Section "A".

Q. Now, you did know at the time you approved the expenditure that Executone systems were being placed in all the Courts and the District Attorney's office?

A. Well, I really don't know just everything that was done. I just know it was placed in Section "A".

Q. You were not aware that was placed in the other sections?

A. Well, I had seen microphones in Judge Wimberly's court but I don't recall having seen them in any other court. [fol. 493] Q. Well, I will hand you a document and ask if you can identify that.

A. Well, I am sure that this is an authentic document but I just can't say. This has Mr. Humphrey's signature but I wouldn't dispute it for a moment that is it an authentic document, if I had anything to do with the trial of this case.

Q. It shows $661.26 expenditure, which you apparently O.K.'d for Executone system in court, does it not, Judge?

A. Well, it says, "Signed by Judge O'Hara."

Q. Is that your signature on that photocopy of it?
A. No, it's not a copy of my signature.
Q. Indicating that it was put on there by the clerk?
A. Yes.

Mr. Gremillion: I object to the introduction of this particular document. That's signed by Judge Wimberly and obviously from his testimony, he doesn't know what it is and for defense Counsel's information, Judge Wimberly will be here to testify and he can ask him the question.

The Court: Let me see the document. He said he did not sign the document, therefore, it couldn't be introduced. You [fol. 494] will have to have someone pr e the signature before it can be introduced.

Mr. Organ: May I have a minute, if the Court please, to review some notes?

The Court: All right.

Q. Judge, is it fair to state that there is a school of thought by a segment of the New Orleans population which advocates that we do not suppress B-drinking and prostitution?

Mr. Gremillion: What was that question?

(Thereupon, the question was read to Counsel by the reporter.)

Mr. Gremillion: I object to that because it calls strictly for an opinion.

The Court: Unless he knows it of his own knowledge.

Mr. Gremillion: I suggest that Counsel ask him if he knows of his own knowledge.

A. I wouldn't be able to answer the question in a general way. I mean, what I know, everybody else knows.

Q. Just answer it that way, Judge.

Mr. Gremillion: I object to that, I have no way of knowing what everybody knows. That's strictly calling for an opinion.

Mr. Organ: He says he knows what everybody knows.

[fol. 495] A. Sure, I know what the average citizen in the community knows. I don't question about that.

Mr. Gremillion: If your Honor please, I hate to belabor the point but that's still his personal opinion.

The Court: I will say this, Mr. Gremillion: The question of knowledge in all cases like this, there are some that are guesses. I don't think the question can be answered either. It won't have any material effect, so far as I am concerned.

Mr. Gremillion: I withdraw the objection.

A. I don't know just exactly what is on your mind. I know that from time to time we get B-drinkers charged in the courts and the people that are interested either in favor of B-drinking—if you get around the community as a whole, I don't think that the community as a whole is in favor of B-drinking or the things that are allied to it. I don't know if I answered your question or not because I don't know just what you are driving at.

Q. I am trying to make it as simple as possible, Judge O'Hara. Is it a fair statement that there is a segment of the New Orleans community which is in favor of allowing B-drinking and prostitution?

A. Well, if there is, it's an insignificant fraction of the community.

Q. You feel that practically the entire community is in [fol. 496] favor of suppressing B-drinking?

A. I think so, yes. I think that would be a fair statement.

Q. Have you heard of public officials making statements to the effect that to suppress all B-drinking and lewd dances would hurt the tourist trade of New Orleans?

A. Yes, I have heard that statement made.

Q. Is it a fair statement that the segment of population which advocates that does attempt to bring pressure on people in public office, including Judges?

A. No.

Q. It is not a fair statement that they try to bring pressure on people in public office?

A. No. I have never seen any evidence of it. The people that are charged with a violation, when they find themselves in trouble, they may try to make some appeal to the Judge but that's the usual thing in every case but the Judges

are perfectly free to use their own judgment and their own opinion.

Q. No question about that?

A. There is no question about that.

Q. But isn't it a fact that some of these elements try to convince Judges that this should not be suppressed completely?

A. No, I have never had anybody try to use that argument [fol. 497] with me.

Q. Not in your entire life on the bench?

A. No. I have heard people advance that argument and say if you don't have something down there to attract the public and attract the visitors, that they won't come.

Q. You have heard that argument used on many occasions?

A. Well, yes, whenever the discussion comes up.

COLLOQUY BETWEEN COURT AND COUNSEL

The Court: What is the purpose of that line of cross examination?

Mr. Organ: Well, I am trying to show, if the Court please, that there is such a segment of the New Orleans population and that it is very possible that that thought is fostered by the vice elements and the racketeering elements. That is one of their main arguments in trying to foster their idea, that it is to a certain extent good for the community to have B-drinking, prostitution and lewd dancers in the French Quarter and on Canal Street.

The Court: I understand but what possible benefit do you think that would be to this Court as to any opinion the City of New Orleans might have or a segment of it. Insofar as enforcement of the law is concerned, whenever a Judge starts listening to the voice of public opinion, then he ceases to be a Judge. His duty is to the law and to the enforcement of the law and I think the District Attorney's [fol. 498] duty is to the law and to the enforcement of the law and to that duty he is wedded; to that duty he is sacred and as long as a Judge will adhere to that—he may be subject to some criticism at times but as far as I am concerned, I have always enforced the law very forcibly

on that. We have segments of any community that think it should be wide open, we have segments that think it should be closed and under those circumstances, regardless of what public opinion may be, I don't think it would enter into the administration of the Judge in any regard, if he holds to the oath which he has taken when he went on the bench.

Mr. Organ: There is no question in my mind that that is what a Judge should do. I do think, and this is the point we are trying to make, that it is possible for a Judge to succumb somewhat to the feeling attempting to be fostered by that segment of the population.

The Court: You have a right to ask Judge O'Hara if it's possible that he or any of the other Judges foster that. You have a right to do that on your charge of defamation. However, to leave an innuendo that the judiciary would be influenced by or prejudiced by that, I don't want to indict the whole judiciary. I am going to recess until one-fifteen.

(Thereupon, at 12:02 p.m., the trial was recessed, to be resumed at 1:15 o'clock p.m.)

[fol. 499] (Pursuant to recess, the trial was resumed at 1:15 o'clock p.m., all appearances as previously noted.)

Mr. Organ: If the Court please, may I make a motion while the Judge is out—not because he is out but to save time?

The Court: All right.

Mr. Organ: Just prior to the recess your Honor made a statement in response to an objection and questions regarding influence exerted by the public on Judges and the import of your Honor's statement as we appreciate it, was that Judges are beyond any influence because they are Judges.

The Court: I believe you misunderstood me on that. I could strike the prior statement and restate it. My statement really should have been off the record. If you want, we can strike it from the record because it was intended to be made by the Court off the record.

(Discussion off the record.)

The Court: Mr. Organ made the statement that he understood the import of my prior remarks was that Judges were beyond criticism. That is not the import of what I intended to say because I believe Judges, like all public officials, are subject to legitimate criticism.

Mr. Organ: I don't want to belabor this thing, if your Honor please, but I understood the import of your statement was to the effect that Judges, because they are Judges, [fol. 500] are beyond influences created by public opinion.

The Court: I said that is the way Judges should be. I did not say they were that way.

Mr. Organ: That clarifies the whole thing.

JUDGE WILLIAM J. O'HARA, having been previously sworn, resumed the stand and testified further as follows:

Cross examination.

By Mr. Organ:

Q. Judge O'Hara, you were Judge of this Court since 1932?

A. Yes, sir.

Q. Now, are you familiar with Section "B" of this court?

A. What?

Q. Are you familiar with Section "B"? That's Judge Platt's division.

A. Well, yes, I'd say I am up to a certain point. I would say so, yes.

Q. Now, isn't it a well known fact that very rarely are any trials held in Section "B" of this court?

A. Well, I have heard that, yes.

Q. Well, you do know that to be a fact, don't you, Judge?

A. Well, yes; call it yes.

[fol. 501] Mr. Organ: Thank you, Judge. I have no further questions.

Mr. Gremillion: I have no further questions.

The Court: Thank you very much. Are you through with Judge O'Hara. You can recall him if he doesn't stay in the courtroom but if he does stay in the courtroom—

Mr. Organ: We have no objection to his staying in the courtroom.

(Witness excused.)

JUDGE SHIRLEY G. WIMBERLY, called as a witness by the State of Louisiana, after being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Gremillion:

Q. State your name, please.

A. Shirley G. Wimberly, Judge of Section "G" of the Criminal District Court of Orleans Parish.

Q. How old are you, Judge?

A. I am sixty-three years old. I was born on August 2, 1899.

Q. Are you married?

A. Yes, I am married and have five children and twenty-two grandchildren.

Q. Do you hold any degrees, Judge?

A. Yes, sir, LL.B. from Loyola University, 1924.

[fol. 502] Q. Did you practice law prior to assuming the judgeship?

A. Yes, for approximately thirty years.

Q. What date did you become a Judge of Section "G"?

A. The first time I was appointed by Governor Long in 1956 for a four year term and I was subsequently elected Judge of Section "G" in 1960.

Q. You know Mr. Garrison, the District Attorney?

A. Yes, sir.

Q. Is he in Court?

A. Yes.

Q. Point him out.

A. Right there.

Q. Judge, are you familiar with the statement that Mr. Garrison made concerning the Judges under date of November 2, 1962, that was published in the States-Item?

A. I am, sir.

Q. Is that statement true?

A. Definitely not.

Q. Judge, have you sent any messages or directives to District Attorney Garrison on how to operate his office?

A. No, sir, I never have. I am too busy operating my own.

Q. Are you under any influence by racketeers?

[fol. 503] A. No, sir, of course not.

Q. Judge, the statement that Mr. Garrison made, has it subjected you to ridicule?

A. Yes, it has.

Q. Would you tell the Court how?

A. Well, I have received many telephone calls of derision.

Mr. Organ: If the Court please, I am going to object to this. It is strictly hearsay.

The Witness: It was on the telephone.

Mr. Organ: Mr. Garrison was not present.

The Court: He can't go into the details of what was said to him over the telephone but you can state that it was read by the public and the reaction of the public and bring it within the purview of the Revised Statutes covering defamation.

Mr. Organ: For him to give his impression of the telephone conversation is just as bad as stating exactly what was said.

The Court: You can reserve a bill.

Mr. Organ: We reserve Bill No. 15. I ask that there be included in that bill the question, the answer, the objection, the reason for the objection, the Court's ruling, as well as all testimony in the case, the bill of information and the entire record.

[fol. 504] The Court: All right.

Mr. Organ: And ask that our objection and exception be made general as to all this line of questions.

The Court: The Court rules that the testimony is admissible, that there has been a public reaction by reason of the alleged defamatory statement. There would be no other way of showing that the publication alleged to be defamatory and exposed the person claimed to be defamed to hatred, contempt or ridicule or to deprive him of the benefit of public confidence or social intercourse, as provided in the Revised Statutes, Title 14, Section 47, dealing with

defamation and the subsequent articles on the same subject. The Court rules at this time that what was said to the witness would be hearsay evidence but the fact that a statement was made to him would not be hearsay evidence if the statement itself is not in evidence, but there is no way to show otherwise that he has been subjected to this injury or to defamation, other than the fact that there was a communication to him showing the public pulse or the public reaction to the statement that was made. I will more fully set that forth in my per curiam which will be attached to the bill of exception.

Q. Have you received calls subjecting you to criticism?

A. I have, sir.

[fol. 505] Q. Have there been many?

A. Yes, I would say quite a few.

Q. Has that been since November 2, since the statement was in the paper?

A. Yes, sir, it has.

Q. Has it been from more than one person?

A. Oh, yes.

Q. On more than one day?

A. Yes.

Q. Have you been hurt by it?

A. I have, sir.

Q. Judge, have you ever been requested by Mr. Garrison to approve the payment of a $900.00 item for carpets in his office?

A. I have, on September 10, I believe it was, 1962. Mr. Garrison came into my office with a motion that he requested that I sign, covering the carpet and drapes in his private office. He stated to me at the time that Judge O'Hara had originally agreed to sign this motion authorizing this purchase but that through inadvertence, Judge O'Hara had left town on his vacation and he had neglected to sign the motion. I asked him if there had been any qualifications or exceptions of any kind mentioned by Judge O'Hara in acquiescence to the signing of the motion and he stated that there were no qualifications whatsoever. Later, Mr. Gar-

[fol. 506] rison, in answer to my questions at an en banc meeting of all the Judges, stated that that was a correct statement as to the occurrence in my office. I signed the

motion with the thought that I was furthering Judge O'Hara's wishes in the matter.

Q. Did you later learn that Judge O'Hara had not received the assurances that he requested of Mr. Garrison?

A. I did, sir.

Q. Did you later learn that Judge O'Hara had refused to sign it until he had proof?

A. I knew that he had refused to sign the motion when Mr. Garrison—that is, originally when Garrison came into my office—but I concluded from what Mr. Garrison told me that Judge O'Hara had changed his mind on the subject and had agreed to sign the motion.

Q. Was that your reason for signing it?

A. That and the fact as I stated to him, that I had no objection whatsoever to a man wanting nice surroundings in the place in which he worked but that would not have been enough—the latter reason—to justify me in my own mind in signing the thing because I knew Judge O'Hara had expressed opposition to it in the beginning.

Q. Judge, what effect did this have upon subsequent approval of motions for expense items in the District Attorney's office?

A. It had a great deal of effect. I think probably it was [fol. 507] one of the primary reasons or the reason for the Judges deciding that they would require five Judges to sign all subsequent motions.

Mr. Organ: I am going to object to that, if the Court please, and ask that it be stricken. This witness has no right to testify as to the reasons someone entered into this agreement. He may testify as to his reasoning but not—

The Court: I think the objection is good. He can state his reasons but not the reasons that are in the minds of the other Judges. Of course, that would be up to them.

Mr. Gremillion: I am only asking him for that reason and that reason only. I am sorry he answered that way.

A. Well, those were part of my reasons. Another one of my reasons was that I learned of the provisions of Act 301 of 1946, Section 16, and also provisions in the city charter which says, in effect, that the District Attorney shall not have a police force or department in his office

and I thought that the moneys that he was asking for was for payment of people for police duties—duties which should ordinarily be performed by the Police Department.

Q. Have you subsequently approved items with other Judges that he submitted to you?

A. Yes. I have a note here I'd like to consult on that subject. From May 7 through September 10, the Judges [fol. 508] have approved 73 motions, totaling $19,284.56. On October 26, the Judges approved 80 items, totaling $10,276.32, in efforts to cooperate with the District Attorney's office.

Mr. Organ: If your Honor please, I move that that last statement of the Judge be stricken from the record. That goes beyond the question.

The Court: He can speak as far as his acquiescence is concerned but he can't speak for the other Judges.

Q. Was that your reason?

A. That was my reason.

Q. Continue, Judge.

A. Since that date the Judges have approved a total of 32 motions, amounting to $17,742.35. The total approved to date amounts to $47,303.23 and we have approved other items since that date. Now, there are several items which we have not approved.

Q. Would you tell us why you didn't approve them and what they were?

A. Yes. Well, for instance, investigators overtime, eight investigators, $400.00. I didn't approve that because I thought that did not properly come out of the District Attorney's so called fund. Charles Jacques, for undercover work, $100.00. There was not supporting evidence to show that that money had been spent. The same thing for Charles Jacques on 8-26, $100.00. Dalton Williams, [fol. 509] undercover work, $500.00. Now, in reference to this Dalton Williams item, I well remember that Mr. Williams came into a meeting of the Judges en banc.

Q. Is Mr. Williams one of Mr. Garrison's assistants?

A. He is one of Mr. Garrison's assistants and he was asked by myself and others there to give us some evidence of the fact that he had spent this $500.00. Mr. Williams

replied that he had given it around among the investigators. We asked him if he had any receipts from the ones he gave it to and he said no. We asked him if he could name the ones he gave it to and he said no, so there was absolutely no supporting evidence of that item and we disallowed it. Now, there was Capital House for legislative session on August 28, 1962, $18.80, which was labled, I believe, for lobbying work done in Baton Rouge, and the only lobbying work that I knew Mr. Garrison had done in Baton Rouge was for a bill increasing his salary and his term to twelve years and we certainly didn't think that was a proper item—at least I didn't think that it was a proper item for an O.K. by the Judges. Then we have J. Chris Arnos, five undercover agents, $100.00 on August 29, 1962. That was disallowed for the same reason, that it wasn't properly supported by evidence of its expenditure. Then we have another Capital House payment for attendance at Legislature, $322.52, September 5, 1962. That was disallowed for the same reason or, rather, that was disallowed because [fol. 510] we thought that was not a proper expenditure. We have Steven R. Plotkin, Assistant District Attorney, undercover work, $9.00. That was on September 5, 1962. There was no proper supporting evidence. We have Max Gonzales, undercover work, $50.00, September 5, 1962, same reason.

Q. Is that all?

A. I might say to this date we have never received any evidence or receipts or vouchers of any kind supporting these expenditures.

Q. Have you requested them?

A. Not I personally, no.

Q. Do you know whether or not they have been requested?

A. Sir?

Q. Do you know whether or not they have been requested?

A. Oh, yes, yes. As a matter of fact, it was officially requested by the Judges in their en banc session. I merely meant that I didn't personally request the information from Mr. Garrison or his office.

Q. Did you attend that en banc session?

A. Yes, sir.

Q. Was Mr. Garrison present at that meeting?

A. Mr. Garrison was present at one meeting, if I remember well, of all the Judges and that was probably in [fol. 511] October of 1962. I don't know the date.

Q. Do you recall the conversation at that meeting between Mr. Garrison and Judge Schulingkamp?

A. No, sir, I don't.

Q. Judge, how many jury trials do you have in your court a month?

A. A month?

Q. Yes.

A. I'd have to guess.

Q. I think you might have misunderstood my question. What is the schedule of jury trials? How many days do you have jury trials in your division?

A. Well, I'd say in the average month, nine days because, you see, there is a matter of impaneling the jury which, under the law, takes place on the first Monday of the month, and then the clerk has to get the jury list printed, to be served on the various and sundry defendants, and when all that is done, you usually get a start about the 15th of the month.

Q. What kind of cases do you try while that is going on?

A. Felony cases.

Q. Before the felony cases are fixed, what kind of cases?

A. Misdemeanors.

[fol. 512] Q. What is the procedure for the fixing of cases in your division, both misdemeanors and felonies? Are they the same as has existed ever since you have been a Judge?

A. Yes, sir.

Mr. Gremillion: We tender the witness.

Cross examination.

By Mr. Organ:

Q. Judge Wimberly, let's go back to prior to Mr. Garrison's submitting this bill to you for the drapes and rug.

A. I can't hear you. Would you mind repeating? Mr. Garrison was coughing.

Q. Let's go back to the time preceding the time of Mr. Garrison submitting to you bill for rugs or drapes or the motion to pay for them. Apparently, from your testimony, you had already talked to Judge O'Hara about it?

A. Yes.

Q. What had Judge O'Hara told you about that?

A. Well, I remember that one day prior to that—I am not the best in the world on dates so I can't tell you the date—one day prior to that, I had gone into Judge O'Hara's chambers on a matter unrelated to expenditures by the District Attorney and I found him and Judge Schulingkamp in there discussing two motions which they held in their hands. Judge O'Hara had one concerning Mr. Garrison's [fol. 513] drapes and rug and Judge Schulingkamp had the one concerning the Capital House lobbying bill and both were demurring about signing the bills.

Q. Did Judge O'Hara give you any reason?

A. Well, my recollection at the time was that Judge O'Hara didn't want to sign it because there were no competitive bids and there was no way of knowing whether it was a fair price for the rugs and drapes.

Q. You are aware that it was under $1,000.00, are you not?

A. Yes.

Q. And you are also aware that under $1,000.00 you do not under the law have to get bids or advertise?

A. That's correct.

Q. And so, therefore, ex propio motu, so to speak, you decided to question these bills, even though the law didn't require it?

A. I wasn't questioning anything at that time.

Q. Well, Judge O'Hara.

A. Judge O'Hara and Judge Schulingkamp were. As I said, I went there on a matter unrelated to this rug and drapes and Capital House lobbying.

Q. Judge O'Hara had already told you that he was not going to approve this and when Mr. Garrison supposedly told you that Judge O'Hara had, then you had reason to [fol. 514] doubt what Mr. Garrison said, didn't you?

A. I had assumed—no, I didn't have any reason at the time to doubt what Mr. Garrison said. I assumed that

Judge O'Hara had changed his mind about whether or not he would sign the motion.

Q. You didn't ask him if he had gotten any competitive bids, did you?

A. No, certainly not. I asked him, however, whether any qualifications or exceptions were made by Judge O'Hara in his acquiescence to signing the motion and he said none whatsoever, it was unqualified.

Q. Isn't it a fact that when Judge O'Hara originally had this motion, that he had a bill which was not sufficiently detailed for him? Isn't that correct and Mr. Garrison advised you of that and advised you that they had gotten a more detailed bill and Judge O'Hara said it was all right?

A. Mr. Garrison told me that Judge O'Hara had agreed to sign the motion and had through inadvertence failed to sign it. That's what he told me and I asked him were there any qualifications or exceptions stated by Judge O'Hara and he said none whatsoever and later Mr. Garrison made that same statement before all eight of the Judges.

Q. Now, did Denis Barry appear before the eight Judges? [fol. 515] A. Yes.

Q. What did Mr. Barry say?

A. What did he tell me?

Q. Yes, when he appeared before the eight Judges.

A. I don't recall him telling me anything.

Q. You don't recall him telling the en banc session anything?

A. I am not saying he didn't but I don't recall it.

Q. You remember the reason he appeared before the en banc session?

A. No, I don't remember that. There were so many meetings and so many people appearing before us that I don't remember it.

Q. Going back to that en banc session, Judge, isn't it a fact that Mr. Garrison was invited to appear and participate in this session to discuss the fines and fees at one-thirty in the afternoon but the Judges had a meeting all morning where they made all decisions and all decisions were already made when Mr. Garrison got there?

A. I don't recall that.

Q. Do you recall having a morning meeting and deciding on five out of eight rules while Mr. Garrison was absent?

A. That could have been very easily.

[fol. 516] Q. By the time Mr. Garrison got to the en banc session you had already decided what the new rules were going to be?

A. Now, that I don't know. I have no recollection of that but I can assure you of this: There was nothing dishonest done by the eight Judges to Mr. Garrison's disadvantage because of his absence.

Q. If Mr. Garrison was invited to participate in the discussion and express his views on the handling of the fines and fees account and the decisions were already made before he ever got there, then he was thwarted in expressing his views?

A. Well, I would say that, assuming those facts to be correct, which I don't.

Q. Judge, you are pretty familiar with the amount of money that the Judges have refused to authorize as of that date for undercover investigation work?

A. From my notes, I am.

Q. Can you give us just an approximate amount?

A. That has not been totaled up, but just running over the columns with my eyes, it appears to be something around $1,500.00.

Q. For that $1,500.00, Judge, you know as a fact, do you not, that it has actually resulted in the closing of five night clubs or padlocking of five night clubs for violations of the [fol. 517] law and the closing of several night clubs on Canal Street?

A. Let me have your question again. I didn't understand.

Q. For that $1,500.00 undercover expense, you know that there were five night clubs padlocked for violations of the law and several additional night clubs on Canal Street that were closed?

A. I read about it in the newspapers.

Q. To be absolutely fair about it, that is a very inexpensive manner of enforcing the law, is it not?

Mr. Gremillion: I am going to object to anything that he read in the newspaper. Let him testify to his own knowledge.

The Court: The objection is sustained.

Mr. Gremillion: I ask that the question and answer be stricken.

The Court: I don't believe he answered.

Mr. Gremillion: I thought he did. I'm sorry.

Q. Where do you get the information, Judge, about Mr. Garrison supposedly lobbying for his bill to increase the length of his term?

A. General knowledge.

Q. General knowledge?

A. Yes.

[fol. 518] Q. Isn't it a fact that that same general knowledge brought attention to you that other bills that Mr. Garrison was interested in pertaining to bonding companies in Baton Rouge and, in fact, that was the sole and only thing he was up there lobbying for?

A. I heard he was lobbying on that too.

Q. And you have no actual evidence whatever that he was lobbying to increase his term, do you?

A. No, except, as I say, it was general knowledge. I doubt if he'd deny it if you'd put him on this stand under oath.

Q. We are going to put him on the stand under oath and he will deny it.

A. I am listening.

Q. And if you knew, Judge, that he was in Baton Rouge lobbying for certain bonding statutes to be passed, then why is it that you assumed that the lobbying bill which he submitted was for an increase in his term?

A. Well, as I say, I based my opinion on general knowledge. Everybody knew it. You don't do anything in the legislature without it being generally known.

Q. But you can't actually point your finger at anything and say—

A. Well, of course not. I am not attempting to do so.

[fol. 519] Q. But yet on the basis of that, you turned down the lobbying bill?

A. Yes, turned it down and I'd turn it down again.

Q. Without asking Mr. Garrison to give an affidavit as to what it was for?

A. You are correct.

Q. Judge, I have the Acts of the State of Louisiana which has the section I believe you referred to.

A. Section 16.

Q. I show you Section 16, sir. Can you find anywhere in there where that refers to the District Attorney's office?

A. Well, of course not.

Q. It doesn't mention the District Attorney's office?

A. It says that there shall be and there is hereby created and established a department of police of the City of New Orleans which shall be solely—s-o-l-e-l-y—responsible for the discharge of police functions herein granted in and for the City of New Orleans and the Parish of Orleans, so don't you think that excludes the District Attorney?

Q. Does it exclude the State Police, Judge?

A. No, of course not.

Q. And is not the District Attorney's office a State office?

[fol. 520] A. Yes, it's a State office.

Q. And this applies only to the City of New Orleans, Parish of Orleans?

A. No, to the City.

Q. This applies only to the City of New Orleans?

A. Yes.

Q. And the District Attorney's office is not part of the City of New Orleans?

A. Who said it wasn't?

Q. I am asking you.

A. You are making that assertion.

Q. I am asking you to tell me if you say it is part of the City of New Orleans?

A. Yes, it's part of the City of New Orleans.

Q. It's a parish office?

A. But it's not a police department.

Q. A parish office is a part of the state, is it not?

A. Yes.

Q. Are you aware of the fact that they have New Orleans policemen assigned to the District Attorney's office?

A. Yes, in small number. I can remember back to where they had two assigned, sometimes three but I can't remember having sixteen and seventeen and such things as [fol. 521] that, nor can I remember the time when they used Assistant District Attorneys as undercover men down on Bourbon Street or anywhere else, which I think is one of the most reprehensible practices engaged in by the District Attorney's office.

Q. Would you say it is as reprehensible as vice?

A. Sir?

Q. As reprehensible as vice?

A. About as disgusting a thing as I know, to take a lawyer and send him down to the Vieux Carre to ferret out B-girls and prostitutes and things like that and come into Court and testify that he gained that confidence by spending money and so forth and then testify about their activities.

Q. Now, just what is wrong with that? Just tell us why.

A. I think it's dishonorable and beneath a lawyer's dignity to do anything like that. I think he is degrading these young men when he does that.

Q. Those young men are all doing that on their own overtime, are they not?

A. If they are doing that on overtime, that doesn't seem to me to make any difference.

Q. The mere fact that they are lawyers makes them too good to be undercover investigators, is that it?

A. Yes, sir, I think so. Do you?

[fol. 522] Q. What my opinion is does not count in this case.

A. Yes, I know but you are engaged in the argument and I just wanted to ask you a question.

Q. Now, is it your testimony that you were as strict with previous District Attorneys as you are with Mr. Garrison?

A. How do you mean, as strict?

Q. I am talking about on signing motions. Were you as strict previously?

A. That's a real question. I don't know what that means and certainly you don't, unless there is something in your mind which you are not disclosing.

Q. Well, Judge, I am trying to make the question just as clear as possible.

A. You are not succeeding. You will have to make them clear enough for me to understand.

Q. Well, I will do my best unless the Judge rules otherwise. Judge, were you as strict with the previous District Attorney's office in approving expenditures for fines and fees as you have been with the Garrison office?

A. Do you mean did I observe the law and strict ruling of propriety in respect to the last District Attorney?

Q. That's a good question. Answer that question.

A. Yes, of course, I did.

[fol. 523] Q. Judge, I hand you an exhibit which has been identified and introduced in evidence as "D-1," which is dated 1959 and purports to authorize the payment for a Pontiac automobile in the amount of $3,385.00 and purports to have your signature on it. Would you look at it and tell us if you approved that expenditure?

A. Yes, that's my signature.

Q. And therefore you approved that expenditure?

A. I assume that I did. I did if my signature is on it.

Q. Will you read that motion and see if it is not a fact that there was no advertisement and no bids on the purchase of that automobile for $3,385.00?

A. I can't remember back to then.

Q. Read the motion.

A. I say my memory doesn't go back that far. I don't know whether they advertised or didn't.

Q. What does the motion indicate?

Mr. Gremillion: If the Court please, the document speaks for itself.

A. The motion speaks for itself.

Q. Do you deny, Judge, that you approved a $3,385.00 expenditure without a bid and without advertisement?

A. Certainly I don't deny it. I assert that if my signature is on this motion that I approved it.

[fol. 524] Q. And it's in violation of the law?

A. I don't know. I don't know whether that was in violation of the law or not. I don't think it was.

Q. Are you saying that you don't know that the law requires bids for over $1,000.00?

A. Strange as it may seem, I don't know all the law on earth.

The Court: Don't argue with the witness. You can ask him questions but don't argue.

Mr. Organ: I asking him if he knows the law on that, Judge.

A. I admit I know a lot of laws but I don't know all of them.

Q. Tell me if you know that law?

A. You mean the law of bidding?

Q. Yes.

A. Yes.

Q. And do you know that that law requires bids for merchandise in excess of $1,000.00?

A. Yes.

Q. That was in the prior District Attorney's term, was it not?

A. What is that date? Yes, it was.

Q. Judge, I hand you what appears to be another motion and ask you if you can identify that as a motion you signed [fol. 525] during the previous administration?

A. Yes, I signed that.

Q. Does that not call for the purchase of an item of $1,073.31?

A. Fifty-one cents.

Q. Fifty-one cents.

A. One of the items, yes. The other is $367.52.

Q. There are no bids, no advertisements on that, are there?

A. I don't see any here. I don't remember as of that date whether there were any.

Q. And the motion discloses none, does it?

A. No, it discloses none.

Mr. Organ: In connection with the testimony of the witness, we offer and introduce in evidence as "D-7" the document just identified.

(Thereupon, the document described was marked "D-7" for identification and filed in evidence.)

Q. Judge Wimberly, I hand you another document. The Attorney General hasn't seen this one, excuse me—which purports to be signed by you, dated August 31, 1961, and it purports to be expenses for Assistant District Attorney Louis LaCour, to effect extradition from Trenton, New Jersey and ask you if you signed that.

[fol. 526] A. That's Mr. Louis LaCour who is now the United States District Attorney?

Q. Yes.

A. Yes, I remember signing that.

Q. Would you look at the itemization on the back of that, Judge? First of all, if you will look on the front of it, on the itemization, it shows August 23 to August 28, 1961, which is five days.

A. That is what it shows.

Q. All right, sir. Now, does it also show down there that the meals were $240.00 and that was for Louis LaCour and William B. Flores of the New Orleans Police Department?

A. Yes, sir. Of course, I had no way of knowing who else he might have taken to dinner with him.

Q. But, Judge, that figures out, does it not, to $8.00 per meal, not including tips?

A. Oh, I knew you were going to make it sound horrible but it probably wasn't anything like that. They probably took some friends to dinner with them.

Q. Took some friends?

A. At that, I'd say they traveled a whole lot cheaper than I travel.

Q. Judge, you mean the Assistant District Attorneys, when they go on extradition, are supposed to take friends [fol. 527] to dinner with them at public expense?

A. Well, they may.

Q. That's all right?

A. They may want to discuss a law proposition with a man over dinner. What is wrong with that?

Q. At Trenton, New Jersey?

A. Yes, anywhere. Lawyers are pretty much the same all over.

Q. There is also another item, recreation, $65.00. You think that's perfectly legitimate to pay for recreation for

Assistant District Attorneys when they go on extradition trips?

A. Well, rather than sit in a hotel room all evening, I would think they might be entitled to go to a picture show or something like that.

Q. $65.00 worth of picture show?

A. Over a period of days, yes, or a Broadway show maybe. Those things cost money.

Mr. Organ: In connection with the testimony of the witness, we offer and introduce in evidence as "D-8" the document just identified.

(Thereupon, the document described was marked "D-8" for identification and filed in evidence.)

Q. Judge, I hand you another document, which is a [fol. 528] photocopy of what appears to be a true copy and I ask you if you remember signing that motion?

A. Yes. That isn't my signature but it's a copy.

Q. The clerk put your signature on it?

A. I know but it isn't my signature. If I wanted to be cute, I could say no, I never signed it but I know I did.

Q. I am sure you are not trying to be cute, Judge.

A. All right.

Q. Would you look at that? What is that for, that $150.00?

A. For a statistical study to establish a system designed to clear court dockets, which has been a bone of contention out here from time immemorial; more studies made of that than they have of the human body.

Q. That's the previous District Attorney's office?

A. Yes.

Q. And he is supposed to make statistical court studies?

A. Yes.

Q. What happened to that statistical study? Did you ever check into that?

A. No, I never checked into it. I don't have time to do such things.

[fol. 529] Mr. Organ: We offer and introduce in evidence the document identified as "D-9."

(Thereupon, the document described was marked "D-9" for identification and filed in evidence.)

Q. I will hand you another document and ask you if you signed a motion for that amount?

A. That also is not my signature.

Q. You remember signing the motion for that payment, Judge?

A. I don't have no independent recollection of it but if you state that I did, I will accept that I did. What is wrong with it?

Q. Well, it appears to be, if you will bear with me, for the professional services and coordinating study of the Traffic Court case load.

A. Yes.

Q. And what has the New Orleans District Attorney's office got to do with the Traffic Court case load?

A. Well, I don't know. He may have wanted to see in connection with some reckless driving and drunken driving cases out here which were also filed in the Traffic Court —why they weren't being moved as quickly there or something like that.

Q. This authorizes a statistical study of that?

[fol. 530] A. Yes.

Q. And you approved it without any question?

A. I approved it. You will notice none of those motions apply to running a police department in the District Attorney's office.

Q. No, I guess they apply to Broadway shows, Judge.

A. No, just about the only kind of motion that we refused to sign for Mr. Garrison.

Mr. Organ: In connection with the testimony of the witness, we offer and introduce as "D-10" the document just identified.

(Thereupon, the document described was marked "D-10" for identification and filed in evidence.)

Q. Judge, I hand you another document which appears to be a copy of a motion which you signed and I will ask you if you recall authorizing that?

A. That's signed in typewriter. What happened to the original of these things?

Q. I imagine they are in the Clerk's office.

A. Why didn't you all get them? You have access to the Clerk's records.

Q. Well, first of all, before we do that and go to that trouble, Judge, do you deny that you signed that motion [fol. 531] and authorized that payment?

A. How can I agree that I signed this motion when it's signed in typewriter? If you ask me to identify something, get the original.

Mr. Organ: If the Court please, we will ask for an instanter subpoena to the Clerk's office to obtain the original of the document which I have.

A. That's the best way to do it.

The Court: All right. Let it be issued.

Q. Judge Wimberly, I have in front of me the Times-Picayune for November 2, 1962 and it says, "The Judges won't allow him to throw money around with both hands like he was doing when he first became District Attorney." Now, Judge, what do you have, what can you tell us that would indicate that Mr. Garrison was throwing money around with both hands?

A. Well, I can tell you first that I can remember one item where he bought twelve chairs that cost $100.00 a piece for the District Attorney's office.

Q. You think that's throwing money around with both hands?

A. I have seen District Attorneys that used practically kitchen chairs in their office.

Q. How about $8.00 for breakfast. You think it's worse than that?

[fol. 532] Mr. Gremillion: He is arguing with the witness.

The Witness: Counsel is just trying to be cute, that's all.

Q. Judge Wimberly, is it your testimony that those twelve chairs were approved at $100.00 a piece?

A. I don't remember.

Q. That would be in excess of the bidding law, would it not?

A. I know that the thing came to the attention of the Judges, although I don't know what disposition was made. I will say this to you that in many cases we have approved what we considered extravagance out of consideration for the merchant that innocently sold those items to the District Attorney.

Q. Just tell us what the items were.

A. I am telling you this in addition to what the items were. I say there were those things and I say a lot of excess things that might have gratified Mr. Garrison's heart, I don't know, but there were a lot of things that I know could have been bought cheaper but if you ask me what they are, I'd have to refer to a lot of records and documents.

Q. We wish you would do that.

A. I don't have that type of documents. I don't have the documents with me.

Q. I think that we will ask the Court for permission [fol. 533] for the witness to leave the stand and bring those documents into Court.

A. Unless the Court orders me to do so, I am not going anywhere to bring you anything. There is a list of items that the Judges approved, which shows a plush chair at $99.00.

Q. Where is that list at the present time.

Mr. Gremillion: The list shows items which five Judges approved—eighty items of different expenses. Judge Wimberly approved all those, with other Judges and he can testify to them.

Q. Show us all the plush items. Just tell us what they are.

A. I don't know whether they are on this one or not. I will have to see. I can find some. Here's a stereo-microscope at $689.59. I don't know what you fellows would need with a microscope. You don't have a crime lab in the District Attorney's office.

Q. This is the coroner's office. You are objecting to the coroner's office having a microscope?

A. I am objecting that the District Attorney bought it for him. He has as much right to do that as he has to pay your laundry bill.

Q. Let me ask you this: How is it that you are so incensed?

[fol. 534] A. I am not incensed. I am just emphatic. That's my emphatic way of talking. I am not incensed at anything or anybody.

Q. We are glad to know that. Tell us other than the microscope.

A. Your sarcasm is noted. What?

Q. Tell us about items other than the microscope.

A. Let's see if they are on this list. Here is a camera and case for $157.03. I don't know what kind of camera you got but that's a pretty good camera, I'll tell you that.

Q. You can't imagine the District Attorney's office needing a camera?

A. Depends on what kind of camera. I can't imagine him needing a camera with diamonds embedded in it or anything like that.

Q. For $157.00, you really don't get a diamond embedded camera, do you?

A. I don't know. They do some pretty good things over there. Here's two flags, $92.48. I don't know what they are flags of. If they were little old American flags, they are all right but I have seen over there a lot of United Nations flags and things in that office.

Q. Your testimony is that you saw United Nations flags in the District Attorney's office?

[fol. 535] A. You bet I did. I am not saying Mr. Garrison's office, I am saying in the District Attorney's office. I remember when Mr. Darden was there, they had flags of a lot of nations in the back of his desk.

Q. All right, sir, go ahead.

A. Here is two plastic plants, $233.30. That was a great necessity for the District Attorney's office, wasn't it, plastic plants—two of them—$233.30. Here's a carpet job, $231.75.

Q. From whom was that carpet purchased?

A. Sears Roebuck and Company.

Q. You think that was too much for the District Attorney to have, $231.00 carpet?

A. Why, because it was purchased from Sears Roebuck?

Q. No, do you think that was an extravagance, Judge?

A. I am just reading off as I go along. You decide. District Attorney, sofa, $199.00, $100.00 overstuffed chair. You are really living in comfort over there, Brother. You are really living in comfort.

Q. Your testimony is that you think that's extravagant?

A. Looks like it on the face of them.

Q. But you approved them.

[fol. 536] A. Yes, I approved them and I told you, for the reason that I didn't think we should penalize the merchants who sold these goods innocently to the District Attorney. You want this back?

Mr. Gremillion: Yes, sir.

Q. Don't you know, Judge, that Mr. Garrison assumed personal responsibility for these purchases, in the event they were not approved by the Judges?

A. Do I know what?

Q. That he assumed personal responsibility for those items in the event they were not approved by the Judges?

A. Well, I think he was foolish.

Q. Judge, I hand you another document which appears to be a motion authorizing payment of $150.00 and ask if that was approved by you?

A. Well, it doesn't bear my signature—I assume that it does. It was signed by me.

Q. It appears to be for a special table to Edward Fallon, Sr. Do you know him?

A. I know the man has got about nine kids for one thing, and he had a little two-bits job in the District Attorney's office.

Q. Was he on the payroll over there?

A. As far as I know, he was.

[fol. 537] Q. And this pays him another $150.00 for special reports, Grand Jury, fines and fees—you know what this is about?

A. No, I have no independent recollection.

Q. You have no idea of what it was about?

A. No, I don't.

Mr. Organ: We offer and introduce in evidence the document just identified as "D-11."

Mr. Gremillion: "D-11" was the other one.

Mr. Organ: The other one is subject to an instanter subpoena. It's not been offered yet.

(Thereupon, the document described was marked "D-11" for identification and filed in evidence.)

Q. Judge Wimberly, I hand you four other documents, which appear to be motions that you signed, all calling for payment for Peter Genapolis for the sum of $50.00, for special investigative work for the District Attorney for the month of August, 1961, where Mr. Genapolis' private car was used. Each has a different month, they are not all for August. Do you remember signing those?

A. No, I have no independent recollection of signing them. I notice again that you haven't got my signature on any of them but if I did sign for Peter Genapolis, if I had it to do over again, I wouldn't do it, not that I think I did [fol. 538] anything wrong. I think I ought to have my head examined for paying him for his private car. I took it on face value, as I took a good many things from the District Attorney when they were there with their red flags up.

Mr. Organ: In connection with the testimony of the witness, we offer and introduce the documents just identified as "D-12, 13, 14 and 15," respectively.

(Thereupon, the documents described were marked "D-12, 13, 14 and 15" respectively for identification and filed in evidence.)

Q. Is it fair to say that you were very lenient with the prior District Attorney's administration in the approving of expenses?

A. No, it's fair to say that I was fair.

Q. Judge, would it be fair to say that the period from November 1, 1961, through October 31, 1962, a period of one year, is a fair representation of the overall operations of your Court?

A. I didn't get your question. What did you say?

Q. Would the one year period beginning November 1, 1961 and ending October 31, 1962, be a representative year for the operation of your Court?

A. The only two months that you could take out from the operation of my court would the months of June and [fol. 539] July, which is vacation period.

Q. I understand that, but your Court was operated, you had your Court in operation during that year period?

A. I assume so.

Q. Now, if I indicated to you that you had thirty-one trials during that year that were Judge trials—decided by the Judge—would you say that that sounds about correct?

A. No, I wouldn't be able to say whether it sounds correct or not. I don't play those things by ear. If you give me some records, I might say it's correct. What are you driving at? Maybe I can answer it. What do you want to know?

Q. I'd like to know how many trials you decided that year without a jury?

A. Oh, I don't know. I'd have no way of knowing that. I have got the statistics here from May 9, 1962 to May 31, 1962—wait a minute—May 9, 1962 to December 14, 1962, but I have no total struck or anything like that. I just have the monthly prosecution of the District Attorney, pleas, the cases continued by the State, continued by the Defendants, jury trials, guilty and not guilty, Judge trials guilty and not guilty. Do you want to see that. You may see it but I won't be able to give you the statistics out of my mind.

[fol. 540] Q. But generally speaking, from November 1, 1961 through October 31, 1962, as far as you are concerned, is a fairly representative year of your operation of Court?

A. How would I be able to say that? I don't know what you mean, to begin with, a fairly representative year.

Q. Was there any long period when you were ill, where you were off the bench or anything of that type? Did you have to go out to another district like Judge Ponder is, and try any cases?

A. No, I did none of those things. I spent a week in the hospital, as I can remember, which is the only time that I ever remember of being absent from Court.

[fol. 542] A. And I can add to that if you will permit me to do so.

Q. I certainly will.

A. That I have worked every day in the week except Saturday and Sundays. That includes Mondays and Fridays which I used for misdemeanor days and pleas and sentences and so forth.

Q. You do try cases on Friday?

A. Oh, every Friday, yes. I have a docket every Friday, misdemeanor docket. Now I can give you some other statistics about my Court if you want them,—

Q. Anything you want, Judge.

A. —concerning the over-crowded conditions in the Parish Prison.

Q. Anything you want to give us.

A. I have less than 15 triable cases that people now incarcerated in the Parish Prison are connected with. I have less than ten demeanors on my entire docket. I am scraping around the bottom of the barrel right now and docket-wise, I think I am in as good condition, and I say it very proudly, as any Court in this country. I don't take all the credit. I have got a very good young Assistant District Attorney named Oser who is doing a very fine job.

Q. Would you say that the District Attorney's office is [fol. 543] pushing the docket as fast as reasonably can be expected?

A. In my Court?

Q. Yes.

A. Oh, yes.

Q. You have no criticism of the District Attorney's office relating to any backlog in Parish Prison?

A. Insofar as my Court is concerned?

Q. Yes.

A. No indeed, due to the fact that Mr. Oser is one of the best young prosecutors I have ever seen in my life. He does a fine job in there. He is on top of his docket at all times.

Q. Now, Judge, getting back to these vice matters, B-drinking, prostitution, lottery and gambling, and so forth, is it not a fact that people who are charged with these crimes have no right to be paroled, they have no absolute right to be paroled?

A. How do you mean?

Q. How do I mean?

A. By what law, what rule of law would that be?

Q. Well, do they have—

A. Article 1578 of the Revised Statutes gives every judge within his jurisdiction the right to parole for all crimes.

[fol. 544] Q. That is correct. Now does the accused have a right to parole without bond? Does he have an absolute right?

A. No, certainly not. It is a matter of grace, parole is.

Q. Right. So, when they are paroled they are paroled without posting a bond, is that not so?

A. Yes. The process is that they are paroled and released for about two or three days which is usually the case before they are required to come in and sign bond.

Q. All right. Now how are they required to come in to sign the bond?

A. Well, they get a notice from the Sheriff's office a capias.

Q. Then, of course—

Mr. Gremillion: Just a minute, if your Honor please, I want to say that I think Mr. Organ is wasting the time of the Court now because that obviously is not this Judge's function to require them to come in and post bond. That is the duty of some other officer of the Court.

Mr. Organ: I am not going into that portion of it any more. If your Honor please, I am trying to establish background in connection with laying the foundation—

The Court: I think you are pretty far afield on the matter.

[fol. 545] Q. Judge Wimberly, is it not a fact that when people charged with vice are immediately released on parole, such as prostitutes, they can be back in operation within an hour or so?

A. I doubt if I have made two paroles for prostitution in my life. I don't parole prostitutes.

Q. How about B-drinking?

A. B-drinking? Yes, I parole B-drinkers if the parole is requested by a lawyer or some person that I know is a responsible person that will produce them to make bond.

Q. In other words, if—you parole them if it is requested by an attorney or some responsible person, is that correct?

A. Yes. Well, that is about the only thing a judge would have to be interested in because after all, it is a matter of being certain that they are going to make bond.

Q. I understand. Now what about the gambling cases? Do you parole gambling cases?

A. Yes, gambling and practically all misdemeanors where I am requested to do so by a lawyer or some responsible person.

Q. Well now, Judge, if these paroles are made within a matter of minutes or within a matter of an hour or less [fol. 546] or an hour and a half or less, that allows these lottery operators and these B-drinkers to be back in business on that same night or that same day hardly without interruption?

A. Yes, and if you parole a man for disturbing the peace, that allows him to get out and disturb the peace again 15 minutes after he is out if you are going to use that theory. You, of course, you are appealing the presumption of innocence to start off with. You are taking the position that every man in jail is guilty.

Q. In the beginning, Judge, can you not agree with me that these people have no right to be paroled without bond?

A. No, I can't agree with you.

Q. They do have such a right to be paroled without bond?

A. What?

Q. They have a right to be paroled without bond?

Mr. Gremillion: This is completely apart from the issue before this Court.

The Court: Just a minute. Just a minute. What possible connection can that have with the question of parole with reference to this particular case.

Mr. Organ: Well, first of all, Judge, I think it goes [fol. 547] right to the heart of this thing. The claim of this witness among, as well as some other witnesses, of course, is to the effect that they have not been influenced in any way by any racketeering element. Now, I am trying to show and intend to show in the case of this witness that in vice cases he has over the past 22 months, such as gambling,

B-drinking, handbook operations and so forth, that he has granted 139 paroles of which 92 of those paroles have been made within from five minutes to within one hour and 45 minutes after it.

The Court: Why don't you save all of our time, why don't you simply ask that question and elicit it without going into the various ramifications of the parole system? If you want to ask that and leave it for the implication that it might have, well, ask it.

Mr. Organ: To have it in there would be meaningless without going into background of parole for the purpose of the record, if your Honor please.

Mr. Greimillion: Parole is a matter of law, your Honor. It is set out in the Statute Book. This judge has his duty to do.

Mr. Organ: We are not arguing that. We are not arguing that at all.

The Court: If you think he has a right and if you think he abuses that right, then you can ask him the question [fol. 548] but to go into the question of whether they are paroled or not paroled without being more specific, I think you would have to ask him the question directly. I am trying to save as much time as possible on this.

Mr. Organ: I am going to try to save time.

Q. Judge Wimberly, if I indicated to you that from December 10, 1960 to October 26, 1962, a period of 22 months, that the records at the police station, the booking records indicate that you granted 139 paroles in vice matters and that 95 of those paroled were within five minutes to one hour and 45 minutes after the accused was booked, can you disagree with my figures in that?

A. I wouldn't accept your figures unless you authenticate them but I will say this, that if I did, it isn't anything unusual. Every judge who has sat back here has granted paroles in gambling cases. As a matter of fact, the best parole risk in town is a gambling case because they never abscond without making bond. Their attorneys see that they make bond.

Q. Now isn't it a fact, Judge, that these "quickie" paroles, these within, say, an hour—

A. I am not going to accept any "quickie" parole business.

Q. All right, these paroles.

A. Have you ever read the opinion of the Attorney Gen-
[fol. 549] eral on April 10, 1956 which said the judge has the authority to parole a prisoner even though he has not been photographed or fingerprinted? I judge that that is what you are getting at. That is the law.

Q. No question about that.

A. I know it is.

Q. In each and every case you are doing the person who is charged a favor, are you not, by paroling them?

A. I am doing what the law gives me a right to do.

Q. Correct. What they give you a right to do, but you are still giving them something they are not—

A. Not necessarily. I parole many times for young lawyers that I don't even know. I just go on their representation that it is a lawyer.

Q. Now, Judge, would you concede in all fairness, that when you parole these B-drinkers within five, ten, 30 minutes or an hour or an hour and a half after they have been booked that they can be back in operation with almost no interruption in their business?

A. Yes, and I say by the same token, a man I parole for assault and battery can be in another fight in 15 minutes after he is paroled. Why draw such ugly implications that I am paroling these people for the purpose of letting them
[fol. 550] go back in business? My life and reputation certainly doesn't justify any such conclusions as that.

Q. There is no implication, Judge, except to point out that it was in complete accord with what they would want on Bourbon Street to get these people back into operation in a very short time.

A. Well, as a rule, I don't parole them for people on Bourbon Street; I parole them for lawyers and people that I know that will have them present for bond.

Q. Now, Judge, the statute under which the Fines and Fees come does not require the signature of five judges, does it?

A. No, it doesn't, doesn't require the signatures of five judges.

Q. It requires—

A. Also, no prohibition in it against five judges signing the orders.

Q. It also gives the District Attorney the discretion on spending the money, does it not?

A. Oh, let's not go into that argument—it's so so foolish, that the District Attorney has the right to use that Fund as he contended in an en banc session without the Judges approving it. Why do you think the Legislature insists upon having a provision in the law that the Judges sign the order?

[fol. 551] Q. Let me ask you this, Judge: If you don't feel the District Attorney has the discretion, can you point to any single case in the previous District Attorney's administration that you refused to authorize?

A. No, I don't remember any.

Mr. Organ: I have no further questions.

The Witness: I don't say there were none, but I say I don't remember any.

Mr. Organ: I have no further questions.

Mr. Gremillion: If Your Honor please:

Redirect examination.

By Mr. Gremillion:

Q. I would like to ask you this question regarding the inferences Mr. Organ is trying to make about B-drinkers being paroled within five or ten minutes and back in business: Do you know those people?

A. No, certainly not, no more than I know a Negro that is charged with aggravated battery or simple battery or anything else that I might parole him for.

Q. In parole cases, regardless of the offense, do you follow the law?

A. Well, of course I do.

Q. Judge, in connection with the testimony a minute ago, you identified a total of 90 (exhibiting document to Mr. Organ)—you identified a total of 80 items that the five [fol. 552] Judges approved for District Attorney Garrison on October 26, 1962.

A. Yes, sir.

Q. Could you tell us what the total amount of these 80 items amount to?

A. $10,276.32.

Mr. Gremillion: I offer, produce and file in evidence State's "Exhibit Number 8," a letter dated October 26, signed by Judge Brahney, addressed to the District Attorney, with a list of the items and the total.

(Whereupon, the document offered by Counsel was duly marked for identification as "Exhibit 8," and received in evidence.)

Q. Now, Judge, have there been other items from the fines and forfeiture funds that have been approved by the District Attorney's bequests?

A. Yes, sir.

Q. Other than these?

A. Yes.

Q. Do you have a list of them or not? If you don't, it is all right. If you do, say so.

A. The only list I have is this one. (Producing document)

Q. Is that the one that you compiled and you testified [fol. 553] from a minute ago?

A. I didn't compile it. I testified, I referred to it as notes which, of course,—

Q. This is all right.

A. —in the law I have a right to do.

Q. But, you do hold, rather, do the Judges now hold regular or necessary sessions en banc for the approval of expenses of the District Attorney for—

A. Yes, we do.

Q. Have you held meetings since October 26?

A. Yes.

Mr. Gremillion: No further questions.

Mr. Organ: If your Honor please, we have our instanter subpoena for that document to the Clerk's office. We would like to have this witness available to call back to the stand on that.

The Witness: I will be in my office down the way. If you need me, send for me.

The Court: Judge, I want to ask you, want to clarify one thing. How many expenditures did either one or more of the Judges sign for the District Attorney's office prior to October 26, 1962? Do you have a list of those?

The Witness: No, sir, I wouldn't have those figures. I imagine Judge Cocke will have them.

Mr. Gremillion: Judge, we are going to put that evi-
[fol. 554] dence on with another witness.

The Court: All right. You don't have that instanter subpoena ready at this time?

Mr. Organ: No, sir.

The Court: You haven't got it yet. All right, we will recess for ten minutes.

(Whereupon, a brief recess was taken.)

AFTER THE RECESS

The Court: Are you gentlemen ready to proceed?

Mr. Gremillion: Yes, sir, your Honor. Call Judge Schulingkamp.

JUDGE OLIVER PAUL SCHULINGKAMP, a witness called by and on behalf of the State of Louisiana, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Gremillion:

Q. What is your name, your Honor?
A. Oliver Paul Schulingkamp.
Q. What is your occupation?
A. Judge of Section F, Criminal District Court.
Q. How long have you been Judge of Section F?
A. Since January, 1960.
Q. Is that when the Division was created?
A. Sir?
[fol. 555] Q. Have you been the Judge of that Division since it was created?
A. That is correct. Not since it's been created, since 1960. It was created before that time.
Q. I see. Judge, do you hold any degrees?

A. Yes, I have a B.A. degree from Louisiana State University in 1940 and an LL.B. in 1943, February.

Q. From L.S.U.?

A. From Louisiana State, yes.

Q. How long have you practiced law, Judge?

A. Since my return from overseas in 1946, continuously.

Q. Were you honorably discharged?

A. Yes, I have an honorable discharge from the United States Navy.

Q. Have you held any other public office—

A. I was—

Q. —other than Judge?

A. —I was appointed Assistant United States Attorney in 1949 by the then United States Attorney, J. Skelly Wright, who is now a Federal Judge, and in 1953 or 1954, I was appointed Assistant District Attorney for Orleans Parish by the Honorable Severn Darden and I served for a little better than a year as Assistant Attorney General under the Honorable Fred S. LeBlanc.

[fol. 556] Q. Are you married, Judge?

A. Yes, I was married on December 20, 1947 to Gloria Tolliver. I might say we have three children, two girls and a boy.

Q. How old are they?

A. Diane is 13. She is a student in Junior High. Eileen is 11 and Gary will be 10 in March. They are students in the public schools, McDonough 39.

Q. Judge, do you know Mr. Jim Garrison?

A. Yes.

Q. Is he in the courtroom?

A. Yes, he is seated at the bar.

Q. Judge, did you read the statement made by Mr. Garrison about the Judges which was published in the States-Item on November 2, 1962.

A. Yes, sir.

Q. Is that article, are those comments by Mr. Garrison true?

Mr. Organ: If the Court please, I object to that. I think the question should be as to the facts related in there. He can not testify the facts are true or not.

Mr. Gremillion: I will be glad to rephrase the question.

Q. Are the facts and the statements made by Mr. Garrison true?

[fol. 557] A. No, they are not true.

Q. Judge, do you have any influence by racketeers over the conduct of your office in any respect?

A. Categorically, no.

Q. Have you sent the District Attorney any messages, clear or otherwise, on how to conduct his office, and I am talking about Mr. Garrison?

A. No.

Q. Since the publication of this statement by Mr. Garrison about the Judges, have you been subjected to ridicule, embarrassment and so forth as the result of the publication of said article?

Mr. Organ: If the Court please, we are going to object to that. If your Honor overrules our objection, then we would like our objection to be made general to all of this testimony with a Bill of Exception previously taken herein to apply.

The Court: Well, make your objection.

Mr. Organ: I object to it on the grounds that it would be purely speculation for this witness to state facts in answer to that question. It would be purely his impression and it would be hearsay.

The Court: It is the ruling of the Court that any statement which might have been made to this witness with reference to ridicule or otherwise, out of the presence of [fol. 558] the Defendant, of course, as to the details of that statement would be hearsay and would not be admissible. However, under the ruling that I have heretofore issued as to the other Judges and I will now restate that ruling, that he has a right to show that there has been a complaint or a, some manifestation of a public reaction that would be adverse to his general reputation and particularly that as to an expression in any manner other than to him which tends to expose him to any hatred, contempt or ridicule or to deprive him of the benefit of public confidence or social intercourse.

Mr. Organ: To which ruling we respectfully reserve a Bill of Exception and ask that it, that there be included

in that Bill of Exception the question, our objections, the reasons for objection, the Court's ruling, all the evidence in the record and the Bill of Information as well as the entire record.

The Court: I will add this further: Since the Bill has been reserved, the Court will more fully state its position with a per curiam, which will be attached to the Bill of Exception.

Mr. Organ: And, we number our Bill of Exception Number 14, if the Court please.

The Court: All right.

Q. Have you been subjected to such ridicule and embar-
[fol. 559] rassment, Judge?

A. Yes, I have.

Q. Has it been on more than one occasion?

A. Yes, it has been on numerous occasions and different sections of social and professional life.

Mr. Organ: Can we make our objection then, general to all of this testimony as well as the Bill of Exception?

The Court: Let the objection ruling be made general.

Q. Has it been since the issuance of the statement by Mr. Garrison?

A. Yes, it has been since that time, sir.

Q. That is, has it been from one person or several persons?

A. Various sources on various occasions under various circumstances.

Q. Have you been hurt some?

A. Yes, I feel that I have.

Q. Have your children been subjected to ridicule as a result of the issuance of this article?

Mr. Organ: If the Court please, I object to that. Mr. Garrison is not charged with holding his children up to ridicule.

The Court: I think, Mr. Gremillion, that it should be
[fol. 560] confined purely to the person.

Mr. Gremillion: Judge, I am not trying to be argumentative, but we have charged him in the bill with social—what

is the word—and, of course, I take it to mean that that would be members of his family as well because the father's general reputation certainly reflects upon that of the children.

The Court: I know, but the language of the statute is complete. I can appreciate why you would ask the question, but still I have to follow the language of the statute.

Mr. Gremillion: That is all right. Thank you, your Honor.

The Court: All right.

Q. Mr., Judge Schulingkamp, after the issuance of this statement by Mr. Garrison, did you have a discussion with him personally about it?

A. Yes, I did.

Q. Where was that?

A. This was in Judge Platt's chambers on an occasion when there were five other Judges of the Court present. I asked Mr. Garrison—

Mr. Organ: Excuse me. If the Court please, I am going to object to the statements, any self-serving statements and any statements of Mr. Garrison for the same reason previ-[fol. 561] ously hereto, previously stated hereto on the grounds that he has only been charged for defamation in the statement which was published on November 2.

Mr. Gremillion: If your Honor please, I am going to introduce now evidence of a conversation between the Defendant and this Judge personally concerning the actual statement.

The Court: The objection is overruled.

A. (Continuing) I asked—

Mr. Organ: Excuse me. To which ruling we reserve Bill of Exception number 15 and we ask there be included the question, our objection thereto, the reason for objection and the Court's ruling on the matter as well as the testimony in the record and the entire record and ask that this Bill of Exception and objection be made general to all testimony of this nature.

The Court: Let the record reflect at this time that this objection was overruled because it was a statement which

the witness said he had with reference to the particular accusation of defamation which is now before the Court. It would be admissible for the purpose of showing that it, the Court had no way at this time of determining what the statement would be, but certainly any statement that Mr. Garrison would make as to this particular charge should be introduced, could be introduced as to this witness and [fol. 562] particularly it would be admissible to show malice, particularly also that if there were a qualified privilege, which the Defendant contends that he has, then it is incumbent upon the State to show malice and the only way that the State could show malice would be by virtue of any statement that the Defendant might have made. I will further elaborate on that in my per curiam, which will be attached to the bill of exception.

Let's proceed.

The question, the answer, the ruling as to all those matters of testimony be general as to this line of questioning. Answer the question.

Q. Judge, tell us what you told Mr. Garrison and what he replied to you.

A. Well, because I felt that my Lonor and my integrity were impugned, I asked Mr. Garrison on this occasion point blank, man to man and face to face, somewhat as follows: "Jim, do you now or have you ever thought and believed that I am under the influence of racketeers?" To which he immediately replied, "Certainly not," which satisfied me a great deal.

Q. Judge, since Mr. Garrison has become District Attorney, has the same system of assigning jury cases, felony cases and misdemeanors been the same system as has been pursued here for years?

[fol. 563] A. Yes, sir. Under the law, the District Attorney sets the docket for trial in different sections, and certainly in Section F.

Q. Is that the same system that was used prior to the time Mr. Garrison became District Attorney?

A. Yes, it is.

Q. Has the District Attorney ever made any complaints to you personally about—or through his assistants—con-

cerning the assignment of cases and the operation of your docket?

A. No, he has not. As a matter of fact, I have on occasions talked to Mr. Charles Ward, who is the Assistant District Attorney in Section F, mutually about what could be done to facilitate the trial of cases in Section F, because my pride in workmanship dictates to me that I do a good, conscientious job. That was the reason for it.

Q. Judge, have you attended en banc sessions with the other judges at which motions have been considered for the approval of certain expense items for the District Attorney?

A. Yes, sir.

Q. Was such a meeting held on October 26th?

A. Yes, sir.

Q. (Exhibiting document to witness) I show you "State's [fol. 564] Exhibit No. 8," which has already been introduced in evidence, and I ask you if you were present at this meeting and if you approved the 80 items shown on the list.

A. Yes. These were items which were—obligations for which were already incurred and for which merchants and others were waiting to be paid. I reviewed these items and felt in good conscience that the Statute justified the expenditure of the money for the payment of the items, particularly since innocent people, namely the merchants, who had expended their goods in good faith, needed to be paid and should be paid.

Q. What was the total amount of the items that were approved for the District Attorney on this particular date?

A. Some $10,276.00.

Q. Thank you.

A. —aggregate total.

Q. Prior to the time that the five-judge rule was established, what was the total amount of motions approved by the various judges from May 7th to whatever definite date you can tell me?

A. From May 7, 1962 until October 1, 1962, I approved—one, two, three, four, five, six, seven, eight, nine, ten—eleven motions presented to me by the District Attorney's office for the payment of such things as Associated Re-

[fol. 565] porters, recording a transcription of Grand Jury proceedings, Dr. Chetta, psychiatric examination, *State* vs. *Crawford, et al.*, on another date the Associated Reporters for recording a transcription of Grand Jury testimony, on still another occasion a Lunacy Commission, *State* vs. *Windsor Merck, et al.* (?), on another occasion the payment of Miss Audrey Wetta, transcribing of Grand Jury proceedings, still another occasion the same item, on May 7th, Miss Wetta, transcribing of Grand Jury testimony, on May 14, the fugitive extradition matter of Jerry Chatelaine and James Pillar, returning David Felson from Sanderson, Texas, to this jurisdiction.

(Note: Reporter unable to verify spelling of names hereinabove at time of transcribing.)

Q. Judge, have you verified the amount approved by the various judges individually from May 7th through September 10th?

A. The aggregate total?

Q. The number of motions and the total.

A. Yes, $15,022.15. No, just a moment. I take that back. That was—$1,500.00 was the total of the 73 motions; from May 7th to September 10th was $19,284.56 and October—on October 26th the Judges approved 80 items totalling $10,276.00, and since that date the Judges have approved [fol. 566] 32 motions amounting to $17,742.00 and some cents, or a total, a grand total approved by the Judges, of $47,303.23.

Mr. Gremillion: We tender the witness.

The Court: Off the record.

(Discussion off the record.)

The Court: Very well. You may proceed.

[fol. 567] Cross examination.

By Mr. Organ:

Q. Judge, on October 26, 1962, did the Judges sitting en banc stop the payment of investigation vice work out of the Fines and Fees Fund?

A. I don't recall the exact date, but I personally felt that with respect to vice investigations and any investigations conducted by the District Attorney's Office, that in view of Act 301 of 1946 that it was the duty of the Police Department rather than the District Attorney to investigate police matters, and consequently in good conscience I felt that I could not sign any motions and orders with respect to investigations by the District Attorney's Office.

Q. In other words, the Judges did stop the approval of funds for investigative work?

A. I can't speak for the other Judges with authority.

Q. Well, did you?

A. Yes.

Q. As far as you were concerned?

A. Yes.

Q. Now you were aware at that time that those investigations had been rather successful in closing down some places of business in the City of New Orleans that had long records of vice violations?

A. I have no personal knowledge to that effect, Mr. Organ. [fol. 568] I read in the newspapers that the activity had been expended along that line.

Q. Wasn't that explained to you by the District Attorney, that he had been successful in doing that?

A. Yes, he made that claim that he had been successful in doing so.

Q. Did you sympathize with his efforts in trying to stamp out prostitution, B-drinking, and gambling?

A. Being a Judge sworn to uphold the law, I sympathize and am in favor of any law—any and all law enforcement, including any effort by the District Attorney to enforce the law within the legal limits.

Q. Now it is a fact, is it not, that the statute or the law to which you have just referred, Section 16, specifically has no reference whatever to the District Attorney's Office for the Parish of Orleans?

A. No. It has reference to the police functions and it describes what the police functions are, including specifically investigative work to ferret out crime. It makes no mention in the statute of the District Attorney.

Q. It has to do with the city government of New Orleans, does it not?

A. Yes.

Q. Now the District Attorney's Office is a state office, is it not?

[fol. 569] A. I think that is correct, operating within the confines of Orleans Parish, which is in effect the City of New Orleans.

Q. Many of these vice statutes are state laws, are they not?

A. Yes, that is true.

Q. Now the statute which you are referring to has no reference whatever to the District Attorney's Office, in other words, the State District Attorney's Office insofar as prosecution of state offenses, does it?

A. The statute, Section 16, does not mention the District Attorney.

Q. Now in order to arrive at the decision which you arrived at, you had to—in other words, to draw on your own opinion of what that law meant, did you not?

A. Yes, that is true, and I read and construed and interpreted the law to my satisfaction.

Q. Now, of course, you are well aware that different statutes mean different things in the minds of equally well trained, legally trained men? Is that not so?

A. Yes. The nature of the law is contention with different and varying opinions by any given group, so any particular statute has to be interpreted. That is the essence of the law. That is what makes it interesting.

Q. Now you were aware when you arrived at your [fols. 570-571] decision not to approve any funds for investigation work that that would indirectly be beneficial to certain criminal elements in New Orleans that the District Attorney had been bearing down on, were you not?

A. No, I would not say that that is a fair assumption. I felt that so long as the authority was legislatively given to the Police Department to ferret out crime of all types, that there was a duly constituted agency to do so, and my honest and conscientious interpretation of the law was that it was not within the province of the District Attorney to play Mr. District Attorney a la television, but that in-

vestigative work was reposed in the Police Department instead.

Q. Well, is it a fair statement that there is no statute that you know of that specifically states that the District Attorney shall not do any investigative work to ferret out crime?

A. Which prohibits him from doing so?

Q. Yes.

A. No, none that I am aware of.

Q. I am sure you are aware, Judge, of Statute 15.17.1, which refers to investigation by the District Attorney's Office to this extent—well, for the purpose of identification, I read the caption: "Attorneys General and District Attorneys to make inquiry when informed of necessity." You [fol. 572] are familiar with that, are you not?

A. Yes, that is the statute with reference to open hearing, and I am familiar with the Marrero case decided and listed in the annotations under that statute.

Q. Now, Judge, if a District Attorney had been informed of B-drinking violations, prostitution violations, and lottery violations, it would be a very preponderous and burdensome machinery to have an open hearing, would it not, and, in fact, ineffectual?

A. Well, no more burdensome than any other open hearing justified and authorized by 17.1.

Q. Won't you agree, Judge, in all fairness that it would be most difficult after a B-drinking had taken place for the District Attorney to have an open hearing on that particular crime, far more burdensome than it would be in the event, say, a murder had taken place where there is a body and other extrinsic evidence of the murder?

Mr. Gremillion: Just a minute, Judge. I think we are going far afield of what we are here for and what we are trying, because the law says the District Attorney has got a right to try anybody. He determines the time and the place, and, if he has got information that somebody is violating a B-drinking statute, he can file a charge against them, a Bill of Information in this Court, and prosecute the next day. So we are just wasting time and going far [fol. 573] afield from the malice that we are here to—

The Court: I think it is wandering rather far afield, but at the same time it's been gone into in the examination of others without objection, and Judge Schulingkamp is giving his version of—I believe he said Section 16 of Act 301 of 1946—and he is assigning his reasons for stopping the funds for investigative purposes. I think there is a relationship as to why he did refuse to sign any motions along that line. Therefore, the objection is overruled and the witness is permitted to assign his reasons.

Q. Would you answer the question, Judge.

A. What was the question?

Q. It is fair to state, is it not, that it would be much more difficult to have an effective open hearing on a crime such as B-drinking, lottery, and vice than it would be on other crimes such as murder, etc., because of the body of the crime, so to speak. In other words, in murder or robbery it would be much easier to prove that the crimes actually occur?

A. Well, I think that is a matter of speculation and a matter of opinion, and I feel that the District Attorney, if he so desired, could employ the machinery of the statute created by the legislature to facilitate his investigation, and, if that didn't suit him, he might get his information [fol. 574] from the Police Department investigation, and, if he had evidence in any other matter, he might use the Bill of Information or perhaps take the matter before the Grand Jury. He has available to him several avenues to initiate prosecution.

Q. That statute you are talking about, Section 16, that provides that crime will be ferreted out by the Superintendent of Police and all policemen. Is that not so?

A. I think that is the sense and import of it, yes.

Q. Don't you—

A. The statute would speak for itself. I am only testifying from my appreciation of the statute.

Q. Don't you know, Judge, that there are policemen assigned to the District Attorney's Office?

A. I have been told that, yes.

Q. Well, now, if there are policemen assigned to the District Attorney's Office and their duties is investigate

crime in the City of New Orleans, what objection do you have to—would you have then to their investigating crime under the direction of the District Attorney?

A. I have no objection to the Police Department or any of its representatives investigating and ferreting out crime of any description, vice or otherwise. I have no objection to that and never did.

Q. Sir?

[fol. 575] A. And never did have, and as long as I am living under my oath, I never will have.

Q. Judge, do you have any evidence or anything that would indicate that Mr. Garrison has any malice towards you?

A. Other than the unjustified, unheralded, and, in my opinion, unprovoked defamatory statements which appeared in the press—other than that, and until that time, Mr. Garrison and I have always enjoyed amiable relations. As a matter of fact, I would like to say that Mr. Garrison on one occasion voluntarily stopped me at the foot of the stairs just outside his office and complimented me for my stand before the Pardons Board in voting against the remittitur of funds which had been forfeited, and I did that because I believed that that was the law and I still believe so, but I thanked Mr. Garrison for his compliment and I appreciated the fact that the District Attorney had that much faith and confidence in one of the Judges.

Q. Did you see any evidence that Mr. Garrison in any way tried to intimidate the Pardon Board?

A. No. He did write a letter, a copy of which I received. Whether that could be construed as intimidation or not is not fo me to say.

Q. You didn't construe it as such, did you?

A. No, because I make up my own mind in good conscience as to what I feel the law is applied to the facts [fol. 576] at nand and sleep well at night.

Q. Now, Judge, how was the five out of eight ruling arrived at?

A. It was a discussion, and I personally felt—I can't testify as to what was in the minds of the other Judges—I personally felt and will testify that it is better in dealing with the public funds and the public fiscus to get the benefit

of the collective thinking of the Judges rather than one, so I saw no harm in listening to their appreciation and evaluation, particularly when there were events which suggested to my mind that Mr. Garrison and/or his assistants would go from one Judge to the other to get an approval of a motion in the event that the motion was originally disapproved by one Judge.

Q. You have no—

A. I further felt that in connection with one motion presented to me, namely the expenditure of hotel and bar bills in the Capitol House by Mr. Garrison and his assistants, and including a man named J. P. Bond, whom I understand to be the clerk of the Traffic Court, that this was not a warranted expenditure of the public money as designated by the statute in question, and I, therefore, declined to sign that motion, because I felt that it was basically wrong.

Q. Did you ever approve any funds for an investigative purpose for the District Attorney's Office before the [fol. 577] Garrison administration?

A. Before the Garrison administration?

Q. Yes.

A. I may have. I don't know.

Q. If you did, Judge, why would you not approve investigative funds for the administration of Mr. Garrison?

A. Because at the time of the former District Attorney, there was no contention about the expenditure of funds.

Q. What do you mean "no contention"?

A. There wasn't an issue as there is now, and I had no occasion to review the act of 1946 and had no definitive opinion one way or the other. The matter was not at issue, and, if I approved any such funds, as I now interpret the statute of 1946, I was in error and I would not do so now.

Q. (Exhibiting documents to witness) I will hand you two motions, Judge, and ask you if you approved those for $50.00 per month investigative fees and automobile use for Mr. Genopoulis (?).

A. Well, this is not my signature. It is a replica with the "s," indicating signed, so I could not tell you.

Q. Is that on both of them or—

A. Yes, it is, "signed," and someone else has written my [fol. 578] signature. This is not my signature on either one of them.

Q. Well, now, Judge, that is the normal way for a copy to be made?

A. True.

Q. —a true copy by the Court, is it not?

A. Yes, that is true. However, this is not a certified copy which you have.

Q. This is a photostatic copy of a true copy, is it not?

A. Yes, that is right.

Mr. Organ: If the Court please, we will ask that an instanter subpoena issue for the original of these documents to the Clerk's Office.

The Court: Granted.

Q. Judge, when were you sworn in?

A. On January 2, I believe it was, 1960.

Q. At the time you were sworn in, were you not given a swearing in party by a man named Mike Callia?

A. On the day that I was sworn in, I attended a congratulatory social at a restaurant in Jefferson Parish, and while I have no personal knowledge that Mr. Callia was the host, it is my understanding, being hearsay, that he was in fact the host for that party, which was unexpected, unsolicited, but nevertheless appreciated.

[fol. 579] Q. So, Judge, you went to that party without knowing that Mike Callia was the host? Is that correct?

A. That is correct.

Q. Did you make any inquiries as to who the host might be before you went?

A. No.

Q. And I believe you testified that that was a congratulatory party for yourself?

A. I construed it to be so. I attended with my wife and three children, my mother, my brothers and their wives, friends, including, I think, some of the members of the District Attorney's staff, lawyers, and there may have been a couple of Judges present.

Q. Now that was before the present District Attorney's administration? Is that not so?

A. Yes, that is true.

Q. Now you know, do you not, that Mr. Callia is a gambler, do you not?

A. No, I have no personal knowledge of that. I have heard that that was the case, but I have no personal knowledge of that for a fact, if it is a fact.

Q. The general reputation of Mr. Callia in this community is that of a gambler of long standing, is it not?

A. I have heard that said.

Q. Now, Judge, is it fair to state that you went to this [fol. 580] party without knowing that there was a man who apparently was a gambler sponsoring the party, that you as a public official might be in a position to have influences brought on you without your even knowing that they were sponsored by a vice or criminal element?

A. No, that is not a fair statement, Mr. Organ. That is far from a fair statement.

Q. Well, now, how do you grant your paroles, Judge?

A. What do you mean, Mr. Organ?

Q. Well, you have parole power, do you not?

A. Yes.

Q. And you would call the district station and have them to release someone that had been arrested, would you not, at the request of specific people?

A. Yes, upon being satisfied that the parole was justified under the authority given me by the legislature under Article 78 of the Code of Criminal Procedure.

Q. Now, you do not parole people to strangers, do you?

A. Ordinarily not, unless I am satisfied that there is a likelihood that the person will appear in court or make a bond at the necessary time.

Q. Well, isn't it fair to state that someone who can call you and get you to parole someone to their care has [fol. 581] at least some influence with you?

A. No. I object to that word "influence." I think it carries a bad connotation in the present context, so I would not use the word "influence."

Q. Well,—

A. I think if a person who calls me reasonably represents to me a solid basis, that he is a substantial person and that the person paroled or requested to be paroled will appear in court, I feel that I have not only the authority but the obligation to parole that person and I have done so in the past, and in the proper circumstances, as long as that is the law,

I will continue to exercise the sound discretion which the law reposes in me.

Q. Well, you know, do you not, Judge, that you are not obligated under any circumstances to parole anyone, do you not?

A. That is correct, sir, because the statute uses the word, "* * * may parole immediately a person from the moment of his arrest," to use the words of the statute.

Q. Now you have paroled in a number of occasions to a man named Rip (?) Roberts, have you not?

A. Yes, that is true.

Q. And you have paroled lottery cases to a man named Rip (?) Roberts, have you not?

A. That is right.

[fol. 582] Q. And Rip (?) Roberts is a lottery operator, is he not?

A. I don't know that to be a fact in my personal knowledge. I know Rip (?) Roberts as a salesman of clothes with an establishment on Julia Street where I met him long years ago and from whom I bought clothes on occasion.

Q. Well, now, Judge, you don't know that Rip (?) Roberts has an arrests record on lottery violations?

A. No, I don't know that.

Q. Did you ever make any attempt to find out what his record was?

A. What his arrests record was? No.

Q. Now, if he had such a record, would it not be fair to state that there is one man who is not—who is apparently in the vice world, who has enough confidence of yours to get you to parole lottery arrested persons to him?

A. Well, you are asking a speculative question, Mr. Organ. Perhaps had I known—if it is a fact that he has an arrests record, that would certainly be a factor in considering the advisability of the parole under the statute. Let me say there is nothing wrong, in my opinion, with a parole. It is authorized by the legislature, and, as a matter of fact, it sets at liberty somebody temporarily, and thereby, to that extent, relieves the crowded conditions in the Parish Prison of which Mr. Garrison complained.

[fol. 583] Q. Also, it is greatly to the advantage of the lottery operators to have their agents back on the street after a very short parole, is it not?

A. It is advantageous to anyone who seeks a parole to be at liberty, yes. In the nature of things, necessarily so in every case.

Q. Now, Judge, are you aware that Rip (?) Roberts is also the—or at least had been in the recent past—a holder of a Federal gambling tax stamp?

A. No.

Q. You are not aware of that?

A. No.

Q. If I advised you of that, would you be surprised?

A. No, I wouldn't be surprised, because I understand that they are available, issued by the Federal Government. I wouldn't be surprised.

Q. Is it not true that you have heard that Rip (?) Roberts has such a stamp?

A. No, that is not true.

Q. You have never heard of that before?

A. That is correct.

Q. Now, Judge, if on October 3, 1961 the New Orleans States had an article under the by-line of Bill Stuckey—

[fol. 584] Mr. Gremillion: Wait just a minute, Your Honor.

Mr. Organ: Let me finish my question, would you please, Counsel.

Mr. Gremillion: I want to make an objection, because I don't know what he is going to say. I don't know what is coming up, so please don't answer until he finishes the question.

Q. Judge Schulingkamp, the October 3, 1961 issue of the New Orleans States had an article in there on the front page under the by-line of Bill Stuckey, referring to Rip (?) Roberts and one paragraph thereof says:

> "Judge Schulingkamp, when asked about the paroles said he had known Roberts for 15 years but did not know he held a gambling stamp or was accused of a connection with the lottery business."

Now isn't it a fact, Judge, that in October 1961 you were advised by newspaper reporters that Rip (?) Roberts had a gambling tax stamp?

Mr. Gremillion: Wait just a minute. Are you going to ask him the question?

Mr. Organ: I will ask him if this article is true or untrue.

A. Well, I don't know if it is true or untrue. I don't think that you can give a categorical answer to the opinion [fol. 585] and statement of the newspaper reporter writing his observations of the given events.

Q. Judge, is it untrue in that it states that you were asked about Rip (?) Roberts having a gambling tax stamp?

A. He probably did ask me that, but I couldn't at this late date recall any specific incident of the man asking me that or not. I would say this in fairness: That if Mr. Stuckey wrote that in his article, the chances are very likely that he asked me that question, but I repeat that I could not in good conscience under my oath tell you whether or not he asked me that question.

Mr. Organ: At this time, if the Court please, we offer and introduce in evidence a special tax return and application for registry of wagering of the Pelican Club, listing the owners, listing one of the owners as Rip (?) O. C. Roberts, and a list of the agents of the Pelican Club, under the Seal of the United States, and mark the same as "Exhibit D-16," and introduce it in evidence. We also at this time introduce in evidence the tax on wagering, showing a Rip (?) O. Roberts wagering tax of $1,819.27, under the Seal of the United States, as "Exhibit D-17."

(Whereupon, the documents referred to by Counsel were duly marked for identification as "Exhibit D-16," and "Exhibit D-17.")

Mr. Gremillion: If Your Honor please, are you finished, [fol. 586] sir?

Mr. Organ: Yes. I am going to offer the same in evidence.

Mr. Gremillion: Well, I object to the introduction in evidence for several reasons: No. 1, they are immaterial. From his own explanation, this was for a gambling stamp outside of the Parish of Orleans and in another parish. That certainly could have no effect on the operations of gambling in the City of New Orleans. No. 2, it is not within

the qualified list of documents that can be introduced in evidence, that is, issued here in the City of New Orleans by an agent of the Federal Government, and that is not within the purview of the statute allowing for introduction of evidence without the person testifying. Further, it is immaterial because the Judge has already answered the question. He said he didn't know whether he had one or not.

Mr. Organ: If Your Honor please, I would like to point out that the addresses of almost all of these agents—

Mr. Gremillion: They are still not authorized to do business in the Parish of Orleans.

Mr. Organ: —18 of them are all New Orleans addresses.

The Court: I think that you would have to produce the records, the original records, and have the witness to identify them. Now if you have got any authority whereby [fol. 587] you can come in here with some certificate under a Seal—

Mr. Organ: It is a Seal of the United States, if Your Honor please. This is a certificate—

The Court: The Seal of the United States is on many documents that are not otherwise admissible, unless they are properly identified.

Mr. Organ: I think the Seal—

The Court: I think I will have to have some authority on that question before I allow it introduced. Before allowing it, I want some authority on it.

Mr. Organ: All right, sir.

Q. Now, Judge, you know the late Peter Hand, do you not?

A. Yes.

Q. And you have paroled to Peter Hand, have you not?

A. Have I ever paroled for him?

Q. Yes, specifically.

A. Possibly.

Q. Specifically on—

Mr. Organ: Bear with me just a moment.

Q. Specifically, did you not parole John Stantucci (?), who was charged under RS-1409 on February 25, 1961 from the First District for Mr. Hand?

A. In view of the number of paroles I made on a daily [fol. 588] basis and in view of the time that has elapsed, I can't conscientiously under my oath answer the question.

Q. Well, now, are you aware of the fact—you cannot deny that you paroled to Hand, can you?

A. No.

Q. Can you think of any other Hand you would have paroled to except Peter Hand?

A. Not offhand.

Q. Now you know, do you not, that Peter Hand has a criminal record?

A. No, I didn't know that.

Q. You had no information on that?

A. No.

Q. Well, do you mean you didn't know it officially or that you had never heard of it at all, Judge?

A. Both.

Mr. Organ: If the Court will bear with me for a minute, I have so much paperwork in front of me I am afraid I am getting lost.

(Whereupon, Mr. Organ produced a document and exhibited it to Mr. Gremillion.)

Mr. Gremillion: Where is that from? If Your Honor please, I object to the use of this document. I presume he is going to try to introduce it in evidence. In the first place, it is a picture with some wording on it. We don't [fol. 589] know where it comes from, it is not an official record, it's not certified to, and it is a copy of something—a photostatic copy of something that is the original of it. I object to it.

Mr. Organ: I haven't asked a question.

The Court: Let him ask the question, Mr. Gremillion.

Mr. Gremillion: I thought he was going to follow his procedure of awhile ago of trying to introduce it in evidence.

Q. (Exhibiting document to witness) I hand you a photograph, and I ask you if you recognize the man in that photograph.

A. Yes. That appears to be a picture of the late Peter Hand taken sometime ago.

Q. Now, Judge, if I told you that Peter Hand had been —that the records will show that Peter Hand had been arrested for unauthorized agents soliciting bail bonds, for gambling, handbooks, for theft and for investigation of extortion, would you say that you had no knowledge of that when you paroled to Mr. Hand?

A. Yes, that is right, with the possible exception of the bail bond case, which I think was allotted to Section "F."

Q. And Section "F" is your section?

A. That is correct.

[fol. 590] Q. Now, Judge—

Mr. Gremillion: Just a minute. If Your Honor please, I want to clear up something about what just transpired. I objected to it, and I would like to find out this: Are you saying that those were convictions or just charges? Because if they were charges, they are definitely not admissible in evidence, because any individual is presumed innocent until proven guilty, and I think what he is referring to is charges and not convictions.

Mr. Organ: Judge, we are going to prove the criminal record of Mr. Peter Hand before this trial is over. Now the State is still presenting their case. I have no way of presenting my case except on cross-examination. Now my question speaks for itself. If the Attorney General has an objection to the question, he should have made the objection when I asked it.

The Court: Well, he has objected since you asked the question. Of course, the Attorney General's point is well taken, that convictions are the only thing that may be introduced rather than charges. However, the Defendant is not presenting their case at this time, and at such time as it comes up as being introduced—in other words, Mr. Gremillion has not offered the filing of any of these documents, so that matter is not before the Court at this time.

[fol. 591] Q. Judge, is it your testimony that you were not aware that Mike Callia had been sent to prison for one year or Parish Prison for one year for gambling by Division "E" of this Court?

A. No, I didn't say that. I knew that he had spent some time in the Parish Prison.

Q. All right, sir. Now, Judge, do you know a Mrs. Almerico?

A. No.

Q. Now if I advise you that Book No. 577-A of the First District Police Station showed that you had paroled a Marie Cooper for B-drinking to a Mrs. Almerico on January 19, 1961—

Mr. Gremillion: What is the date, Mr. Organ?

Mr. Organ: January 19, 1961.

Q. —would you tell me that that book is in error?

A. No, I wouldn't tell you that.

Q. Do you have any idea of who Mrs. Almerico is?

A. Would you spell the name please.

Q. A-l-m-e-r-i-c-o.

A. Yes. Well, that is one word, and Almerico conveys a different meaning than the two words Alma, A-l-m-a Ricaud, R-i-c-a-u-d.

Q. That is correct.

A. So when you asked the question, I envisioned in [fol. 592] my mind an individual with two names, the first name Alma, the second Ricaud.

Q. Right.

A. The word Almerico has a significance to me.

Q. Yes.

A. —in that when I was practicing law I represented for a brief time a Mrs. Almerico.

Q. Now—

A. Spelled the way you spelled it.

Q. What was her first name?

A. I don't know.

Q. Was it Jolanda?

A. Yes.

Q. J-o-l-a-n-d-a?

A. That is true.

Q. Now, if the First District records indicated that you paroled a B-drinker to her custody, you would not deny that, would you, Judge?

A. No, I would not deny it.

Q. Were you aware of the fact that Mrs. Almerico, Jolanda Almerico, had been arrested for the following things: Soliciting B-drinks, soliciting B-drinks, assault, allowing solicitation for B-drinking on the premises, B-drinking on the premises, soliciting B-drinks, disturbing the peace, being loud and boisterous, interfering with the po-[fol. 593] lice, serving intoxicated persons, and serving alcohol to minors, would you tell us that you had no knowledge of that when you paroled this person to Mrs. Almerico?

A. Yes, I would tell you that.

Q. You had no knowledge whatever of her involvement with the police?

A. That is correct.

Q. Now, Judge, in all fairness, Mrs. Almerico must have been in your confidence to some extent for you to parole somebody to her custody. Now, in view of the fact that you did not know that she had this record, is it not fair to state that you could have been influenced by racketeering or vice elements without being conscious of it?

A. No, that is not true, Mr. Organ.

Q. Can you recall who invited you or advised you to come to the congratulatory party that was given for you at which you found the host to be Mike Callia?

A. No.

Q. Now, Judge, on vice cases when there are quick paroles—I mean within an hour or an hour and a half—such as prostitution or lottery, is that not to the advantage of the person that is arrested so that they can get back into business within a very short time after they are booked?

A. In the same sense that it is to the advantage of anyone charged with any crime to be paroled, yes, and when [fol. 594] you use the words "quick parole," I would like to point out to you by way of explanation that Article 78 uses the words, "entitled to immediate parole," and, to my mind, "immediate" means without inordinate delay, so that I think that when a person refers to paroles as "quick" or "quickie," that he is doing a genuine disservice and not observing the spirit and letter of the law.

Q. Well, now,—

A. —because "immediate" means right now.

Q. Well, now, actually no one is entitled to parole without bond?

A. No, that is an unfortunate choice of words. I consider he is entitled to consideration for a parole, but "immediate" is a word used in the statute, and that means without unnecessary delay, and I might say that I told Mr. Stuckey, the reporter who interviewed me, that I had observed that the newspapers and others to serve their own purposes apparently had referred to paroles with the qualifying adjective "quickie," because I felt that that carried an evil connotation in the layman's mind and to the uninitiated who didn't know that the statute used the word "immediate," and I told him that he dare not use the word "quickie," because it would be doing a genuine disservice and not accurate as measured by the statute.

Q. Well,—

[fol. 595] A. And he didn't use it either, in fairness to Mr. Stuckey, and be that said to his credit.

Q. Well, aside from the activities involved, Judge, is it not a fact that very frequently you parole people on vice cases that are out within 10 minutes, five minutes, after they are booked, 20 minutes, 30 minutes? That is very frequent, is it not?

A. I always make it a practice to have the desk sergeant follow the police administrative procedure of what is known as mugging and printing, unless there are rare exceptions as justified in some cases, before they are released, so when you say 10 minutes or five minutes, I don't think that that is an accurate statement.

Q. Well, let's—

A. Because it takes more time than that to take the people to the place where they are mugged and printed, but when the administrative police procedure has been accomplished and I have ordered a parole as per the statute, then I think that the machinery should be carried out so that the person is released as authorized by the legislature.

Q. Now, if the district record books disclosed that you had paroled many of these persons and they were out within a matter of minutes—10 minutes, 20 minutes, five minutes, an hour—they would be correct, would they not, Judge? You have no reason to doubt that?

[fol. 596] A. No, I have no reason to doubt that the record books were accurate, but when you refer to "many," "many," of course, is a relative term, and I would have no idea nor would any reasonable person on this occasion as to how many you construe to be "many."

Q. Well, Judge, may I ask you this question then: From a period of time of January 10, 1961 to September 26, 1962, which is roughly 21 months, you granted 143 paroles in vice cases, 79 of which the arrested persons were released within—from no time to an hour and 30 minutes, and when I say "no time," I mean they were released at the moment they were booked. Would you say that those records are grossly in error?

A. No, I couldn't say that they are grossly inadequate (sic), of course not, but when I consider the number of paroles that I am called upon to make day and night, everyday, Saturdays and Sundays included, I think that this probably represents a true and accurate picture as is reflected by the books of the district station, and I have no reason to believe that those records are not accurate.

Q. Now, Judge, if I advised you that the arrest card indicated on Rip (?) O. Roberts that he has been arrested for gambling, for cards and dice, for operating a gambling house, allowing gambling on the premises, possession of lottery paraphernalia, and possession of lottery parapher-[fol. 597] nalia again, would you say that you had no knowledge whatever of that at the time you paroled lottery arrested persons to him?

A. My answer is the same as it was before.

Q. You had no knowledge whatever of that?

A. That is true.

Q. Now, Judge, would the year beginning November 1, 1961 and ending October 31, 1962, for that year would that be a fair representation of the operation of your Court? By that I mean: Did you have any long seiges of illness, were you called to another district to serve or anything of that nature?

A. Yes, I was called to the First Judicial District by the Supreme Court of Louisiana on two distinct occasions to try an abortion case and to handle criminal matters pending in both Jennings and in Oberlin. Now just when that

took place, I don't know offhand, but there are records of my appointment by the Supreme Court by which you could verify that. That may or may not have happened in the time you choose to ask me about.

Q. Approximately how long were you away from your division then?

A. As best I can recall, I would say about two weeks.

Q. You don't know whether that two week period fell [fol. 598] within November 1, 1961 to October 31, 1962?

A. No, I don't know that.

Mr. Organ: Thank you, Judge.

Redirect examination.

By Mr. Gremillion:

Q. Judge, all of these instances of parole that Mr. Organ has asked you about, was that prior to the time that Mr. Garrison became District Attorney?

A. Yes, I would say so.

Q. Now you have testified that you were one of the Judges that initiated the approval of five of the Judges on items of expense coming from the Fines and Forfeitures Fund submitted by Mr. Garrison? Is that correct?

A. Yes, sir.

Q. Now did Mike Callia have any influence on you in making your decision?

A. No.

Q. Did Rip or Rif Roberts or whatever his name is have any influence on you in making that decision?

A. No, sir.

Q. How about Mr. Peter Hand?

A. No, sir.

Q. Where is Peter Hand now?

A. I understand that he is now deceased.

Q. Did Mrs. Almerico have any influence upon you in [fol. 599] making your decision to see that the disposition of these fines and forfeitures was made according to law?

A. No, sir.

Q. What was the reason that you decided to maintain a more constant vigil over the expenditure of fines and forfeitures?

A. Because I felt that the District Attorney had presented to me in the form of a motion an expenditure which I considered improper under the statute and not authorized by the statute, and because I had been and have now a keen awareness and appreciation of my duty as a Judge under the statute to approve or disapprove the expenditures by the District Attorney, and, secondly, because I have a keen desire now and in the past to do my duty as a Judge to my dead level best.

Q. Did you or have you in any way attempted to block or obstruct District Attorney Garrison in his efforts to close down clip-joints and to suppress vice?

A. No, sir.

Q. If you did not approve an expenditure for undercover work, did the District Attorney have anything available or any force available to perform such investigations?

A. Yes. As I understand it, the Police Department is the duly constituted investigative agency, and I understand that the Grand Jury can interrogate people with respect [fol. 600] to the possibility of a crime being committed. I understand that is our system of law and those avenues are available to the District Attorney, this one or any of his predecessors.

Q. Do you know or do you have any knowledge of the use of policemen for investigative work having been requested by Mr. Garrison of Superintendent Giarrusso?

A. I understand there are several police officers who are assigned to the District Attorney's Office. Whether that finds legal sanction in law or whether it stems traditionally from the fact that years ago the Police Department as a matter of comity and security assigned one or two police officers to be doormen and general helpers in the District Attorney's Office, I don't know. I rather doubt as a legal proposition whether that practice of assigning police officers to the District Attorney's office has any sanction or aproval in law and would be upheld by any appellate court.

Q. Do you know of any case where the Police ever refused to aid Mr. Garrison in his undercover work and suppression of vice?

A. No.

Mr. Organ: Object to that. There has been no foundation laid for this witness to know if such events occurred or not. [fol. 601] Mr. Gremillion: He brought it out. I am only bringing out what you brought out.

Mr. Organ: I didn't go into it at all.

Mr. Gremillion: Yes, you did.

The Court: I think you went into the question of investigative officers very thoroughly, Mr. Organ.

Mr. Organ: I didn't go into the question of whether the New Orleans Police Department refused to cooperate with the District Attorney's Office, and I certainly don't think this witness is in a position to testify.

The Court: He can only testify to what he knows.

Mr. Organ: In any case.

A. To my knowledge, no, sir.

Q. Now do you know the people who are paroled when you receive a call to parole somebody by a lawyer or somebody else? Do you know the people who are paroled?

A. Generally not, most people.

Q. What happens to them after they are paroled, Judge—

A. I suppose they are released, Judge.

Q. —as a general proposition?

A. As a matter of course, they gain temporary freedom until such time as they are compelled to post a bond and appear in court, and I might say by way of explanation that I keep a vigil and watch as to those persons that I parole [fol. 602] with a viewpoint as to whether or not they do in fact appear at the time stipulated, and I would say that a goodly percentage of those persons whom I have paroled have vindicated my good judgment in paroling them initially.

Q. And after they are paroled and make bond, whose duty is it to bring them to trial?

A. The District Attorney.

Mr. Gremillion: I tender the witness, if you have any other questions.

Mr. Organ: I have a couple.

Recross examination.

By Mr. Organ:

Q. Judge, on the return from the instanter subpoena, I have been furnished with this document (exhibiting document to witness) and I ask you if that is not a motion which you signed?

A. This is my signature. I signed this order, motion.

Q. Does that not show that you authorized a $50.00 payment for Mr. Peter Genopoulis (?) for investigative work and use of his automobile?

A. That is correct, sir.

Q. Was he a member of the District Attorney's staff?

A. I understood him to be.

[fol. 603] Q. And that was before Mr. Garrison took office?

A. May 1961.

Mr. Organ: In connection with the testimony of the witness, I offer and introduce in evidence and mark as "Exhibit D-18," the document just identified.

(Whereupon, the document offered by Counsel was duly marked for identification as "Exhibit D-18," and received in evidence.)

Q. Now, Judge, do you know where Mrs. Jolanda Almerico lives?

A. Lives or lived?

Q. Where she lives or where she does business.

A. No.

Q. Is it possible that she operated one of the Canal Street strip joints that was closed down by the District Attorney in August?

A. Yes, that is possible.

Q. Thank you. As a matter of fact, do you know her to be connected with the Monkey Bar?

A. No, I don't know that.

Mr. Organ: Thank you, Judge.

The Court: There are one or two matters—are you through with him, Mr. Gremillion?

Mr. Gremillion: Yes.

The Court: There are one or two matters that I would [fol. 604] like to ask you, Judge, that I would like to clear up.

By the Court:

Q. Am I correct that from May 7th to September 10—you had how many items that you approved?

A. Seventy-three motions totaling $19,284.56.

Q. Now on October 26th, how many did you approve?

A. Eighty items aggregating $10,276.32.

Q. Now since that time, has there been any approval of any of them?

A. Yes, there has been approval of thirty-two motions aggregating some $1,742.35 to be precise.

Q. What date was that approval?

A. On various occasions since the 26th of October, Judge.

Q. Has there been any approval since the present argument?

A. Yes, sir, there have been approvals which were approved by me for items which I in my good conscience thought should be approved and paid under the statute as is now authorized by the legislature, and I approved them.

Q. One other question: Do I understand that your procedure—that when you refer to a parole, that you parole them prior to the time that they make bond?

A. Yes, that is right, sir.

Q. I wanted to clear that up. We do not grant paroles [fol. 605] until after the conviction, unless there is a conviction, and this is a manner by which you release them until such time as they make bond? Is that correct?

A. That is correct, sir. It is a parole in the sense that the person is given temporary liberty, as is authorized by Article 78 of the Criminal Code.

The Court: All right.

Mr. Organ: I have another question, if the Court please.

The Court: All right.

Further recross examination.

By Mr. Organ:

Q. Now none of those motions which authorized the payment of funds which you spoke about authorized the payment for vice investigation?

A. I don't think so, Mr. Organ.

Q. So the truth is that if the District Attorney needed funds to make a vice investigation, he has been completely stopped by the action of the eight Judges?

A. Well, no, I wouldn't agree with that statement, sir. You are trying to put words in my mouth, and I won't subscribe to that. That is not an accurate statement.

Q. Well, you can explain your answer to that, Judge.

A. Well, I say it is not an accurate statement.

[fol. 606] Q. How is it inaccurate?

A. Because you say that he has been completely stopped. He is stopped when, in my humble judgment, the law doesn't justify the expenditure of funds. Now I don't propose to be the Delphic Oracle in law, I may be in error in my legal construction of the law, but I would think that if I am in error or the other Judges, that the District Attorney would apply to the Supreme Court for a writ of mandamus to tell us legally and orderly what the law is rather than blast us in the newspaper in the way he has done.

Q. You have not made any effort to determine what the Supreme Court's opinion was on this matter, have you?

A. No, because the matter has not been presented by the District Attorney for adjudication by the Supreme Court in the orderly process of things, probably by writ of mandamus.

Q. And you have not asked the Attorney General of the State of Louisiana—you did not—to render an opinion on this before you stopped the authorization of any vice expenditures?

A. No. I felt that if Mr. Garrison had a legitimate complaint, he had legal, orderly, and gentlemanly ways to proceed to find out what the law was rather than the methods he chose to employ.

Q. But the effect of it is that Mr. Garrison is now [fol. 607] stopped from his vice raids on Bourbon Street or any other vice raids?

Mr. Gremillion: If Your Honor please, that is an unfair question. He is actually accusing this Judge by that particular question—whether he answers it yes or no, he has committed a crime, because Mr. Garrison has got the city police, consisting of hundreds of men, that he can put them all to work tonight on Bourbon Street or anywhere else in New Orleans. He has got that available, and I object to it, and I ask that it be stricken from the record.

The Court: Let the objection be sustained. I think it is an improper question.

Q. Judge, are you of the opinion that the Police Department of the City of New Orleans is available to the District Attorney for these vice raids?

A. Is favorable to the District Attorney?

Q. No, is available, that he has control of the Police Department. He has no control whatever over the Police Department and what action they take, does he?

A. Statutorily, no, but I would suppose that both being law enforcement officers, they would be able to consult with each other to the mutual end of upholding the law and doing whatever is necessary to obtain the evidence for prosecution by the District Attorney in the courts of law.

Q. Then you do believe the District Attorney's Office [fol. 608] is a law enforcement agency?

A. Not in that sense in the sense that the District Attorney is generally sworn to uphold the law and to prosecute. I think that is his prime function, to prosecute people in the criminal courts who have been charged with violations of the criminal law, either by bills of information filed by him or by indictments by the Grand Jury. That is his prime function.

Q. That is your legal opinion on it?

A. Yes, sir.

Mr. Organ: No further questions.

Mr. Gremillion: That is all, Judge. Thank you.

(Witness excused.)

Mr. Gremillion: Judge, I want to call another witness, but I don't know which one is available. Could I have a couple of minutes to see which one is outside, please, sir?

The Court: It is getting pretty close to five o'clock. Will you have any chance to do anything with the witness in the meantime?

Mr. Gremillion: I think I can get pretty far, if I see which one is out there.

The Court: We will take a five-minute recess.

(Whereupon, a brief recess was taken.)

After the Recess

[fol. 609] Judge Edward A. Haggerty, Jr., a witness called by and on behalf of the State of Louisiana, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Gremillion:

Q. What is your name, sir?

A. My name is Edward A. Haggerty, Jr.

Q. What is your occupation?

A. I am Judge of Section "C" of the Criminal District Court, Parish of Orleans, State of Louisiana.

Q. How long have you been Judge of that court?

A. Since December—I took office December 11, 1956.

Q. What did you do prior to that time?

A. Prior to my being elected as Judge of this court, I served in the District Attorney's Office under five separate and distinct District Attorneys for an accumulated period of over eleven and a half years.

Q. During a portion of that time, did Mr. Garrison, the present Defendant, serve with you and under you in that office?

A. Yes, sir, he did.

Q. I presume you know Mr. Garrison?

A. Yes, sir, I do.

[fol. 610] Q. Can you identify him as being present?

A. Yes, sir (indicating), the gentleman seated there with the glasses.

Q. Judge, are you a graduate of a law school?

A. Yes, I graduated from Loyola University of the South in June of 1940.

Q. Are you married?

A. Yes. I have been married for 15 years, I will be married 16 years in July 1963.

Q. Did you have any service during the past World War?

A. Yes, I served in the United States Navy for a period of four years and one month. I entered as an Ensign and I left as a Lieutenant. I am presently a Lieutenant Commander in the United States Naval Reserve.

Q. Were you honorably discharged?

A. Yes, I received an honorable discharge as a Senior Grade Lieutenant, U. S. Naval Reserve.

Q. Judge, did you read the statement that Mr. Garrison made concerning the eight Judges on November 2, 1962, which was published in the States-Item?

A. Yes, sir, I did.

Q. Is that statement true?

A. That statement is absolutely false.

Q. Judge, have you ever been influenced by racketeers [fol. 611] in your activities on the bench or otherwise?

A. Never in my life.

Q. Are you sympathetic towards racketeers?

A. No, sir, I am not.

Q. Have you sent any messages or directives to District Attorney Garrison on how to operate his office?

A. At no time.

Q. Did you or have you in any way attempted to block or obstruct District Attorney Garrison in his efforts to close down clip joints or to suppress vice?

A. At no time.

Q. Judge, have you as a result of the statement made by Mr. Garrison on November 2 been subjected to embarrassment and ridicule as a result of this statement?

Mr. Organ: If the Court please, I would like to re-urge my objection at this time to this same type of testimony as we have before. I will ask that my objection—I am sure

that Your Honor's ruling will be the same—but that the bill of exception and everything pertaining to all of this line of testimony. Otherwise, I will have to object to it.

The Court: All right. At this time Counsel for the Defendant makes the same objection he has made to the same questions that were propounded to the other Judges. Is that correct?

[fol. 612] Mr. Organ: Yes, sir.

The Court: And the same ruling, and a bill of exceptions is reserved by him, for the reasons that I have set forth on the same objection to this same testimony and the same line of testimony from the other Judges, and the same reservation of the right to affirm my reasons more completely and more fully in my per curiam to the bill of exceptions. Now off the record.

(Discussion off the record.)

The Court: Let the minutes reflect that where the transcript might show that the Court reserved the right to assign additional reasons in a per curiam at a later date to be attached to the bill of exceptions, where the transcript of evidence or transcript of the ruling of the Court shows it to be made a part of the bill of exceptions, this will be deleted from the ruling throughout the transcript that was made up, for the reason that the per curiam will not be a part of the bill of exception but will rather answer the matters and the facts that may be set up in a form of exception.

Q. Go ahead and answer, Judge.

A. I certainly feel that the Judges and myself particularly have been irreparably injured and have been subjected to ridicule, hatred and contempt by the people of the City of New Orleans.

[fol. 613] Q. As a result of the statement?

A. No question about it, yes, sir, as a result of that statement.

Q. Has it occurred—

Mr. Organ: I am going to move that that answer be stricken. It contains no facts whatever. It is an opinion of the Judge. He said, "I certainly feel that we have been

held up to ridicule and contempt." That contains no facts whatever. This is—

The Court: I think he can testify as to himself, as to the result of the publication. Of course, I don't think he can testify as to any of the other Judges, as to what they might have experienced. He can testify to facts but not as to the details, and I believe that comes within the same objection, the same ruling, that you made before.

Mr. Organ: Yes, sir.

Q. Now, Judge, I want you to tell me about—you personally and within your knowledge—would you state your answer with that in mind.

A. Yes, sir. I personally have been subjected to ridicule, hatred, contempt, embarrassment, humiliation, in social places such as Brennan's Restaurant, the New Orleans Athletic Club, on many occasions people particularly hollering "moo" at you as a sacred cow. They make remarks that you are always on vacation, they make remarks that [fol. 614] they didn't realize the Judges didn't work, and, in fact, it was a general tenor—I don't remember the exact words, but I feel that I myself have been immeasurably injured, embarrassed, and have been subjected to ridicule because of that statement.

Q. Has that happened on more than one occasion?

A. Yes, it has happened on more than 10 occasions.

Q. Has it been more than one person?

A. Yes, it has been by groups of people.

Q. Has it been in the City of New Orleans?

A. Yes, sir, it has been.

Q. Judge, at the time that Mr. Garrison was an assistant with you, what administration—what District Attorney was that under? Do you recall?

A. I think it was just prior to Mr. Leon Hubert. That would have been Mr. Severn Darden. I believe Mr. Garrison came in under the administration of Mr. Darden and was retained by Mr. Hubert. In fact, I believe I had the pleasure of breaking in—as the common expression goes—breaking in Mr. Garrison in Section "A," Judge O'Hara's Court, when I believe he first became Trial Assistant in Judge O'Hara's Court.

Q. Now, Judge, first of all tell me who assigns cases for trial.

A. The docket of the Criminal District Court—each [fol. 615] section is set up through the District Attorney and through the various trial systems in each respective court on the jury days assigned as well as the misdemeanor days, so that the entire control of the docket under the Code of Criminal Procedure is under the complete jurisdiction of the District Attorney by a Code of Criminal Procedure Article, and the Court has no authority to set a case for trial except in very few instances when a defense counsel moves the Court for a speedy trial, and the Court advises the Trial Assistant that, if he doesn't set it within a period of time, the Court itself will set the case for trial.

Q. Has that happened to you since you have been a Judge, that defense people asked for a speedy trial?

A. It has on one or two occasions, but when it has occurred, the Trial Assistant did comply and set the case for trial without it being necessary for the Court to so order it to be set for trial.

Q. Was that prior to Mr. Garrison's term of office or during his term of office?

A. I do not recall. The instance has only occurred about twice in the last six years.

Q. Judge, the procedure for assigning cases and trying cases, both felony cases and misdemeanors, how long has that system prevailed here in the Criminal District Court of Orleans Parish?

[fol. 616] A. You mean the assignment of cases by the District Attorney?

Q. Yes, for the number of days during the week and so forth.

A. Well, I was Assistant District Attorney in November of 1941, so at least for 22 years to my own personal knowledge, and prior to that I was a Deputy Clerk in the Criminal Clerk's Office, so I would say from my own personal knowledge over a period of some 27 or 28 years, and I understand it goes much further back than that.

Q. Now, Judge, is Mr. Garrison following the same policy?

A. As far as I know, he is. The trial docket is set by the Trial Assistant, in this Court Mr. Foto.

Q. Is he following the same policy with reference to the assignment and trial of cases that you taught him when you were with him in Division "A"?

A. Well, I didn't actually teach Mr. Garrison but he followed as an assistant, Trial Assistant, in Judge O'Hara's Court, the same practice that the assistants are now following today, yes, sir.

Q. In other words, Mr. Garrison is following the same procedure that has been followed in the past for years?

A. As far as setting cases for trial on the docket, yes, that is correct.

[fol. 617] Q. Now, have you approved individually any motions of Mr. Garrison for the expenditure of money from the fines and forfeitures account for expenses in his office?

A. You mean as a group of Judges en banc or by myself?

Q. In other words, from the period of May 7th until October 2 or, say, October 20th, along in that area, have you approved motions, yourself personally, for the District Attorney's Office?

A. I think it is possible I may have, because I worked in May and June, went on vacation in July and August, came back September 15th. It is possible I may have approved some motions sent to me from May 7 through June of last year. I wouldn't recall them. If my signature is on them, I apparently did approve them.

Q. I see. Now, Judge,—and I want you to tell me what you know and what you know alone about this—

A. All right.

Q. Were you one of the Judges that met in en banc session and agreed that these five Judges had to approve the motions for expenditures?

A. Yes, sir, I was there. October 4 of last year.

Q. And were you also present at a meeting on October 26 when some 80 items were approved?

A. Yes, sir, I was.

[fol. 618] Q. Did you vote for those items?

A. Yes, sir, I did.

Q. Now, Judge, why did you decide that it would be necessary to have five Judges approve these expenditures in the future? What was your reason? Tell us that.

A. Well, there are several reasons: No. 1, during the political campaign between Mr. Garrison and Mr. Dowling, it came to the attention of several of the Judges, including myself, that some of these funds were being used for a purpose which we considered at that time not to be within the realm of discretion of the District Attorney. When Mr. Garrison took office, certain expenditures were made by Mr. Garrison which brought this matter to a head. There was some controversy between Judge O'Hara and Mr. Barry and Mr. Garrison or Mr. Garrison when I was on vacation, and the first I learned of this was when I read in the newspaper to the effect that Judge O'Hara said he would not approve any further motions, nor would Judge Schulingkamp, nor would Judge Wimberly, until the Judges met in October on return from vacation, which is when we met.

Q. May I interrupt just one second?

A. Surely.

Q. Did that apply to emergency cases or extradition?

A. I wasn't present, but I had been informed it did not, didn't apply to extradition or bills for doctors, Dr. Chetta, [fol. 619] or psychiatrists, or any emergency measures. I understood that was for extraordinary expenses and not emergency expenses which are necessary in the running of the District Attorney's Office.

Q. Now go ahead.

A. But, to get along with your question, there was some controversy brought to our attention that some misrepresentations were made, either by Mr. Garrison himself or by Mr. Barry, to Judge O'Hara, and it was brought to the Judges' en banc attention that morning that the representations made by either Mr. Garrison or Mr. Barry to Judge O'Hara—

Mr. Organ: If Your Honor please,—

The Witness: I will continue unless you state your objection.

Mr. Organ: —I am going to move that be stricken, because Mr. Garrison was not there.

The Court: I don't think the proceedings of that meeting, en banc meeting, would be admissible if Mr. Garrison was not present. However, at the time that he was present, I think he can testify.

The Witness: I can testify as to matters when Mr Garrison was present.

Mr. Organ: I move that the portions be stricken, unless the Judge says that Mr. Garrison was there when those [fol. 620] items, matters, were discussed.

The Court: The Reporter will have to read it back so we can see what to strike, the portion that is admissible and the portion that isn't admissible.

Mr. Gremillion: Maybe I can save some time. Forget the question and answer, and I will start over. I will stipulate it is all stricken.

The Court: The only thing to be stricken would be the last question and the last answer.

Mr. Gremillion: Correct. I will rephrase my question:

Q. Judge, what was your reason for requiring approval of five Judges for the approval of motions for expenditure of funds from the fines and forfeitures account by the District Attorney? Now tell me your reasons.

A. I will give it to you in one sentence, and then I would like to explain it.

Q. Yes, sir.

A. Because apparently Mr. Garrison himself or Mr. Barry made misrepresentations to Judge Wimberly, which provoked Judge Wimberly—this was brought out in the presence of Mr. Garrison, that the representations made to Judge Wimberly were false, were inaccurate, and did not reflect a true picture, and, therefore, one Judge would be turned against another Judge until he finally got some- [fol. 621] thing signed, and that was the reason for why we adopted a five-man rule.

Q. Was Mr. Garrison present—

Mr. Organ: Just a moment. I move that be stricken. He has testified as to what happened with Judge Wimberly and he has no personal knowledge of that.

Mr. Gremillion: He does have, Your Honor.

Mr. Organ: He has no personal knowledge.

The Court: I believe he testified Mr. Garrison was present at that time.

The Witness: That is correct.

Mr. Organ: The Judge hasn't testified he was present when this alleged misrepresentation was made to Judge Wimberly.

The Witness: I was present when Mr. Garrison was questioned by Judge Wimberly and Judge Cocke, and the answer made by Mr. Garrison was to the effect that he did not intentionally make any misrepresentations to Judge Wimberly and Judge Wimberly called his hand on it and said, "You did. You stated so and so. Is it not a fact?" And he said—he did state that Judge O'Hara to his mind and knowledge had approved it but forgot to sign it, and that is what he said to Judge Wimberly, and Judge Wimberly said, "Well, now, really that was a lie, it was an untruth," and Mr. Garrison said, "I did not purposely lie [fol. 622] to you, Judge Wimberly. It was my intention or my purpose or my understanding from some orders in the office that Judge O'Hara had agreed to sign it, but didn't sign it because he left on his vacation." That was stated by Mr. Garrison in my presence.

Mr. Organ: Judge, that part of the testimony in this case that Mr. Garrison made misrepresentations to Judge Wimberly should be stricken, because admittedly he was not there when Mr. Garrison made any misrepresentation to Judge Wimberly.

The Court: He has only testified as to what Mr. Garrison said in his presence to Judge Wimberly. I think that is admissible. It is admissible for two reasons: It is admissible to show that he did make the statement, and it is admissible for the purpose of showing malice.

Mr. Organ: Well, from which ruling we respectfully reserve a Bill of Exception for the reason that the testimony shows that this witness was not present at the time of this alleged misrepresentation by the District Attorney to Judge Wimberly.

Mr. Gremillion: We have never said that, Mr. Organ.

Mr. Organ: We ask that the question, the answer, our objection thereto, the reasons therefor, the Court's ruling, the testimony in the record, the entire record, and the Bill

of Information be included in our Bill of Exception, and [fol. 623] that it be numbered No. 16.

The Court: Let the record reflect that the statement of Counsel is not correct, that this witness has testified only to the fact that he was present at the time there was a discussion between Judge Wimberly and the District Attorney. The Court is allowing that evidence to go in and not any evidence of any statement that this party might not have been present at the time he had any other discussion with Judge Wimberly. The Court is considering only the evidence as to the conversation between Judge Wimberly and Mr. Garrison which the Court has heretofore ruled is admissible. The Court at this time states it is admissible and the Court allows it to be admitted, and the Court will assign its reasons for the admission in a per curiam, which will be attached to the Bill of Exception, and insofar as the conversation that was had between Mr. Garrison and Judge Wimberly, of course, this witness could not testify to it, but I want my ruling to emphatically state that Counsel's objection does not meet with the statement of the witness.

It is 5:00 o'clock. Gentlemen, tomorrow morning at 10:00 o'clock.

(Thereupon, at 5:00 o'clock p.m., proceedings in the above entitled and numbered cause were adjourned to Wednesday, January 23, 1963 at 10:00 o'clock a.m.)

[fol. 626] (Pursuant to the adjournment, proceedings in the above-entitled and numbered cause were resumed at 10:00 o'clock a.m. on Wednesday, January 23, 1963, appearances being the same as heretofore noted in the record.)

The Court: Are you gentlemen ready to proceed?

Mr. Gremillion: Yes, sir.

JUDGE EDWARD A. HAGGERTY, JR., having been sworn and having testified previously, resumed the stand for:

Redirect examination.

By Mr. Gremillion:

Q. Judge Haggerty, do you belong to an association of armed robbers?

A. Positively not.

Mr. Gremillion: We tender the witness.

Recross examination.

By Mr. Organ:

Q. Judge Haggerty, at this en banc meeting which you were describing yesterday, did I understand your testimony correctly that Mr. Garrison made an explanation at that time that he had been informed by someone in his office that Judge O'Hara had approved the bills for his drapes and carpeting?

A. Yes, sir, that is my recollection. I believe he particularly mentioned Mr. Barry, if I am not mistaken.

[fol. 627] Q. Mr. Barry was there at the meeting?

A. Not when Mr. Garrison was there. At one time they were both there and at other times Mr. Garrison was there by himself. Mr. Barry was sent for and brought the particular bill in, the bill itself for the drapes. I believe they went and got some notation of that particular bill and an explanation was attempted to be made that—the drapes were spelled out—the first thing was just a billhead with the amount of money. The accompanying document stated it was so many yards at so much a yard, and they said they thought that was the information that Judge O'Hara wanted. I believe Mr. Garrison stated to Judge Wimberly that he would not purposely lie or misrepresent himself to Judge Wimberly, although Judge Wimberly found out from Judge O'Hara that there was in fact misrepresentation made.

Q. Were you satisfied with Mr. Barry and Mr. Garrison's explanation?

A. Well, as a responsible District Attorney, I don't think it is proper for one Judge to say get this for me and I will approve it, and go tell another Judge that you gave it to that Judge. It's conduct that I wouldn't think would be approved as an attorney; as a District Attorney, certainly not.

Q. Well, I am sure you meant to answer my question, but I don't believe that you did. Were you satisfied with [fol. 628] the explanation made by Mr. Barry and Mr. Garrison?

A. I was not the party aggrieved. The party aggrieved was Judge Wimberly, and he certainly was not satisfied. The misrepresentations were not made to me, so whether I was personally satisfied with it makes no difference as far as I can see.

Q. We will have to let the Court decide whether it makes a difference or not.

A. Well,—

Q. My question still stands: Were you satisfied with the explanations?

A. No, sir, I was not. Otherwise I would not have voted to change the rule from one to five so they wouldn't play one Judge against another.

Q. All right. Now would you tell us your reasons for—did you have any other reasons for voting for changing from one to five?

A. That was primarily the reason, so that representations could not be made to one Judge, and, if he wasn't satisfied, to get the bill signed they would go to another Judge without letting the second Judge know that the first Judge wanted additional information.

Q. Well, let me ask you this: At any time, at any time other than this one incident, was there any implication whatever that they were following such a practice?

[fol. 629] A. Now, would you explain your question.

Q. On any other bill, on any other motion, on any other time they presented anything to a Judge to sign, was there any implication that they had previously presented it to a different Judge and had it refused?

A. Not to my knowledge.

Q. This is the one and only occasion?

A. That is correct.

Q. And both Mr. Garrison and Mr. Barry explained that it was due to a misunderstanding, did they not?

A. As I understand it, in substance, they tried to make an explanation. I don't believe it was accepted by Judge Wimberly, nor was it accepted by Judge O'Hara.

Q. Now what is your attitude toward authorizing expenditures for vice investigations out of the Fines and Fees Fund by the District Attorney's Office?

A. At the time—I would like to give a full explanation, if you will permit me.

Q. Absolutely, sir.

A. Originally—I have been out here a number of years, and I was in the District Attorney's Office myself for about eleven and a half years—the old procedure of a Judge approving matters which were submitted to City Hall, sometimes it was so long and cumbersome to get an extradition, to get witnesses out of town immediately, so when this [fol. 630] special act was put in when Dowling was District Attorney, I thought in my mind the same procedure would be followed, except that it would speed matters up, and it did. He would not have to wait two or three days for his money. At no time in the five District Attorneys that I worked under did a District Attorney ever use money—and he had police assigned to his office too—did he ever use money to be paid by the City of New Orleans to do undercover or investigative work. Now wait. I haven't finished.

Q. All right.

A. —if you don't mind.

Q. Not at all.

A. —so when these motions were presented—by the way, none of them were presented to me for my signature, to my knowledge—when these motions were presented to the various Judges who did sign these motions for undercover, they presumed that Mr. Garrison was following the law, had no reason to inquire into them. A red flag had been raised prior to Mr. Garrison taking office when it came to the attention of the Judges that possibly some of the funds were being misused by the previous administration. In fact, Mr. Garrison made capital of that in his campaign speeches,

and I am aware of that too. Now he found fault with the way Judge Dowling, Mr. Dowling, District Attorney, was making use of these funds.

[fol. 631] Q. Please don't—

A. I am going to answer.

Q. Please don't go into what Mr. Garrison said.

A. Well, what he said was very important.

Mr. Organ: Your Honor, I am going to object to that. Certainly that has nothing to do with what happened after Mr. Garrison took office. Certainly there is no relationship between what he said in the campaign long before this matter came up.

The Court: I believe you raised the question all the way through, Mr. Organ, as to the uses of the fines and forfeitures for investigative purposes, and this witness is giving you, I think, a very comprehensive answer to your question. He certainly has a right to do so. You can't require him to answer yes or not and not explain his answer. He has the right to explain to you. You have asked him that question.

Mr. Organ: Well, then, may I ask the Court this: Is this being admitted on the question of malice or otherwise?

The Court: I think he is explaining his answer to a question—in response to a question you have asked.

Mr. Organ: All right.

Q. Go ahead, Judge.

The Witness: Thank you, Judge.

[fol. 632] A. I left off where I said that the very situation that Mr. Garrison complained of, I agreed with him at the time on many occasions that it was something that something would have to be done about and a check would have to be made, that a new system would have to be entered into so that this money could not be used indiscriminately as a slush fund or to pay salaries, for which we were told some of it was used, and he was aware of that, and he knew that the same system under the previous administration was not going to continue, and he found fault from the very beginning—why did we pick on him and change the system.

Well, we changed it because he defeated a man in office, and that was one of his main points of his campaign. Now I am not finished yet, if you don't mind.

Q. Just stick to the point, Judge.

A. It is to the point, very much to the point. I did not know of my own knowledge that money was being signed by various Judges for undercover work. Had the motion been presented to me, and if an explanation was given to me at that time—not now, but at that time—what it was being used for, I would probably have signed it too, just as I would a search warrant, but for some reason the District Attorney's Office saw fit not to enumerate who they were going to investigate or where or by whom or for what reason, nor did they make a return in any fashion like you do [fol. 633] in an ordinary search warrant. In other words, the Judges could not even be brought into the confidence of the District Attorney's Office, because they might drop the nickle on them. I would have signed a motion for undercover if it had been spelled out and if it was agreed that a return would be properly made, because it w[illegible] City money and not the personal funds of the District Attorney.

Q. Are you stating, Judge, that it would have made a difference to you as to who the District Attorney was going to investigate?

A. No, sir, I didn't say that. You are trying to change, Mr. Organ—

Q. I am just asking if that—

A. I said a search warrant.

Q. I am asking if the import of your last answer is—

A. No, sir. You misunderstood me. I said in a search warrant, every time a Judge signs a search warrant, they have to spell it out by affidavit, who is going to make the search, what place they are going to search, what they are going to try to locate, whether it is lottery, narcotics, jewelry, whatever. Under the law, the law provides that a Judge who signs a search warrant must be apprised of that fact. The law took into consideration that the Judge could call that party up and tell him, "Partner, get that stuff out [fol. 634] of there. They are coming to knock your place off." If the law requires that in a search warrant, why wouldn't Garrison do that in an application for undercover

funds? What makes it so secretive that he would not give an explanation? As I understood from talking to the Judges that did sign, it was generally for investigations for this, for that, and no explanation was ever given up to this date to the Judges for those investigations.

Q. In other words, Judge, if it was Mr. Garrison's intention to investigate, say, Madame Francine's or the Frolic Club on Bourbon Street, you would want that put in the motion to you before the investigation is made?

A. Not necessarily. I wouldn't say that.

Q. What would you want?

A. I would say that the motion should be presented in this fashion, at least as far as I am personally concerned: We need $500.00 to investigate one, two, or three places on Bourbon Street which we suspect of doing something, and we intend to use so and so and so and so, and we will make a return on the money expended to you at the completion of this, and we intend, if we spend the money, to earmark it so we can recover whatever we can recover and earmark it as evidence. That is what I would have liked to have had if I was asked to sign such a motion.

Q. I see. Now you have never signed such a motion? [fol. 635] A. No, sir, never have signed a motion as far as I know. Unless you show me one, as far as I remember, there have been no motions presented to me to sign money for undercover investigations, primarily because I was on vacation, but I was here in May and June, but I was not here in July and August, and I mean that is when Mr. Garrison had these motions signed by some of the Judges.

Q. Now you say that now you wouldn't even sign that sort of motion?

A. No, sir. I have suddenly discovered—not suddenly—I just had no reason to look it up. I am of the opinion that the statute passed giving Mr. Garrison and Mr. Dowling prior to Mr. Garrison—I am clearly of the opinion that the statute is unconstitutional, and I believe steps will be taken to have it written off the books, because it violates—

Q. Now, Judge,—

A. Let me finish. —it violates several provisions of the law, to-wit: Act 301 of 1946, Chapter 5, Sections 4-501, which states:

"That the Department of Police headed by a Superintendent of Police shall (1) organize, administer, supervise, and discipline the police force of the city. [fol. 636] (Sub-paragraph 4) Make all legal searches, seizures, and arrests, and exercise all legal authority incident thereto, which is now or may hereafter be conferred by law upon police officers, and maintain lock-ups for the confinement of prisoners, including the House of Detention."

Section 4-503 states:

"* * * No office, department or board operating in or for the city, other than the Department of Police, shall have a police force."

Article 2, Section 2-101 is another section. I do not have it verbatim, but it states that the Legislature itself cannot change the funds which were previously allocated to the city, and that is what this particular statute does. It seeks to change the funds which were allocated to the City of New Orleans, and, secondly, it is unconstitutional because it permits the District Attorney to set up a separate police department within the District Attorney's Office, so I have now changed my mind completely. I think it is unconstitutional.

Q. Now, Judge, in other words, you have decided that this statute was unconstitutional, and there has never been a judicial proceeding presented to you where you had the [fol. 637] right to decide its constitutionality or unconstitutionality, has there?

A. Mr. Organ, you are very incisive with words. I didn't say I decided; I said I think it is. It has never been passed upon.

Q. Well, you reached that opinion and it has never been presented to you?

A. No, sir. It is my opinion that if it will be presented to a proper forum, I humbly believe as an attorney and as a Judge that it will be declared unconstitutional.

Q. Now the proper forum would be the Criminal District Court?

A. No, sir.

Q. It would be the Civil District Court?

A. It all depends.

Q. Or a higher court?

A. It could be the Criminal District Court very easily if it came in on a motion, say a defense attorney filed a motion that these men were paid by funds and in the motion it would not go to the guilt or innocence of the defendant, but it could be raised *inter alia* in a proceeding. It could very well be passed upon by the Supreme Court, if it were not touching on the guilt or innocence of a particular defendant, but passing on the constitutionality of a particular statute. It could be decided by the Criminal Court.

[fol. 638] Q. No defense lawyer ever raised that point in your Court, have they?

A. No, sir, they have not. I would like to make a further explanation, Judge, if I may.

Q. If it is to the last question, I have no objection.

A. It is to the last question, about a separate police department. In the Grosch case, former Sheriff Grosch, at one time years ago Sheriff Grosch—I went to his wake the other night and he was a friend of mine—he sought at one time to have the Criminal Deputy Sheriff of Orleans Parish assume police powers in 1953, and I was in the District Attorney's Office at the time, and I am aware of it personally, and I believe the Grosch case, which is cited at 64 Southern Second, 25, which states that the Sheriff is not an investigator of crime nor is he charged with the duty of apprehending criminals, that that was the responsibility of the city police.

Now there was a 1913 case, *State Ex Rel Bourg vs. Marrero*, 61 Southern 136, decided in 1913. Now that particular case follows the same legal thought expressed, whether or not the District Attorney's Office can have a police department, and this refers to the District Attorney, not the Criminal Sheriff, and it is stated in that case that the law [fol. 639] made it the duty of the District Attorney to inquire ex officio into the fact by causing all persons whom he supposed might have some knowledge thereof to be summoned before a Judge or a Magistrate in order that their depositions might be taken, but, in talking about the Dis-

trict Attorney, it says, "But he was not required to assume the functions of a detective and undertake personally to ferret out the facts connected with such crimes or the names of the witnesses thereto." So that the Grosch case—

Q. Now—

A. —follows the ruling of the Marrero case in setting up —not only do you have the specific law of the City Charter of the City of New Orleans, which says that neither the Criminal Sheriff or Orleans Parish nor the District Attorney per se can in and of itself act as a detective or a policeman.

Q. Now, Judge, don't you know that the Marrero case did not say the District Attorney could not, it said he was not required to?

A. That is correct. I just read that to you.

Q. So it implied that he has the option of doing it if he wishes to?

A. No, sir, that doesn't necessarily follow.

Q. It only says he is not required to make an investigation?

[fol. 640] A. Well, all of his duties are spelled out in law, you are aware of that, Mr. Organ. In the Code of Criminal Procedure it states what the District Attorney should do if he has a responsibility and duty to do so. He does not have duties and responsibilities to do things not enumerated in the Code of Procedure.

Q. You know, do you not, that there is not one single case where it is specifically stated that the District Attorney has no right to investigate? You know that, do you not?

A. The only two cases on the subject that I am aware of are the Marrero case and the Grosch case.

Q. And they do not state the District Attorney has no right to make investigations, do they?

A. The Code of Criminal Procedure states that the District Attorney, if a crime is presented to him, can present it to the Grand Jury or call an open hearing.

Q. Judge, would you answer my question: You know of no case which says the District Attorney has no right to make an investigation, do you?

A. Well, Mr. Organ, you are playing around with words.

Q. I don't think I am.

A. Let's see what you mean. Can you make your question a little more intelligent please?

[fol. 641] Q. Is there any single case which you can give us the citation of which states in unequivocal language that the District Attorney has no right to make an investigation?

A. Well, I don't wish to quibble with you. I think the proper answer to your question is that the qualifications of the District Attorney are spelled out in the code, his duties are spelled out in the code, and if to make an investigation is one of his duties, I would answer you in the affirmative. If it is not spelled out in the Criminal Code, I would say he does not per se have a legal right to make an investigation.

Q. Do you have a citation?

A. No, sir.

Q. Just give us a citation.

A. I gave you the Code of Criminal Procedure as my citation. I have no cases.

Q. And the Code of Criminal Procedure does not specifically say the District Attorney has no right to make an investigation, does it?

A. The Code of Criminal Procedure spells ouf the duties of the District Attorney. You are trying to add additional duties which are not spelled out in the code. If you want to do that, you have to amend the code, sir.

Q. Now don't you know, Judge, from a practical point of view—you have been an Assistant District Attorney?

[fol. 642] A. Yes, I have.

Q. —from a practical point of view that Article 15:17.1 would be practically useless in trying to suppress vice, and it would be much more effective to carry on raids such as Mr. Garrison has done?

A. Let's see what article you are talking about. Get the code and let's see what you are referring to.

Q. 15:17.1.

Mr. Organ: Do you have a code here, Counsel?

The Witness: I have some in my office here.

Mr. Gremillion: I can tell you what it is. It's the method of conducting investigations, namely an open hearing or a grand jury, which is available.

The Court: That is 15:17.1?

The Witness: 15:17.1. I would like to refresh my memory on it.

(Volume produced and handed to witness.)

A. I would like to answer your question.

Q. Surely.

A. First, Article R.S. 15:17 spells out the powers and duties of the District Attorney and the Attorney General of the State:

> **"Subject to the supervision of the Attorney General as hereinafter provided, the District Attorney shall [fol. 643] have entire charge and control of every criminal prosecution instituted or pending in any parish wherein he is District Attorney and shall determine whom, when, and how he shall prosecute, provided that every District Attorney shall have the right to employ or to accept the assistance, in the conduct of any criminal case, of such counsel as to him may seem fit."**

Now it is interesting that your question comes up, because in looking through the code there is a footnote on page 99, which states:

> **"A District Judge has no power to appropriate money in order that the Grand Jury may employ special investigafors."**

Now to get to your R.S. 15:17.1, it states:

> **"The Attorney General or any District Attorney when informed that a crime or misdemeanor has been committed, and that no complaint or declaration thereof has been made before any Judge or Justice of the Peace, he shall inquire ex officio into the facts [fol. 644] by causing all persons believed to have some knowledge of the fact to be summoned before a Judge or Justice of the Peace in order that their depositions may be taken."**

Now, there is the format when some knowledge comes to a District Attorney, what he should do. Now you are saying

he should go beyond this and conduct raids and investigations. Is that the substance of your question?

Q. It is your opinion that he goes beyond that—

A. Yes, sir, it is.

Q. —when he is informed of crime and he causes them to be summoned?

A. That is correct, to be summoned before a Judge or Justice of the Peace. He could also call an open hearing or he could have it brought before the Grand Jury, because the Grand Jury has subpoena power and an open hearing would have subpoena power.

Q. You feel the word "cause" in there does not embrace any investigation whatever in any way, shape or form?

A. No, sir. Investigations could be embraced by bringing before the Grand Jury or open hearing or before a Judge, but the reason why you bring it before a Grand Jury or have an open hearing is because the persons would be under [fol. 645] subpoena power. If they would be brought before a Judge and they refused to come, the Judge does not have subpoena power, unless there is a case pending before him, whereas the Grand Jury would have and an open hearing would have.

Q. Now, when was that passed? When was that made part of the code, the law you just read?

A. What is that?

Q. Just look at the source of it. It is in there.

A. I am reading my interpretation of R.S. 15:17.1.

Q. I know, but give us just the source of it. Give us the date that it was passed.

A. Are you asking me to read for you, sir?

Q. The date.

A. The date it was made part of the law? (Handing volume to Counsel) Well, here, you can read it sir.

Q. "Source, Revised Statutes of 1870."

A. Well, that is the original source, and it was amended, it was amended subsequently, and the source sections with subpoena provisions based on Act 1855, No. 121. Now whether this particular R.S. 15:17.1 was originally in that exact language back in 1870, I do not know, because it could have been amended many times.

Q. You will acknowledge that the methods of law enforcement have changed entirely since those days?

A. No, sir, I do not.

[fol. 646] Q. You do not acknowledge that?

A. No, sir.

Q. Now, Judge, when was the first time that you told anyone that you considered this statute under which Mr. Garrison is operating with fines and fees. unconstitutional?

The Court: Just a moment. Before he goes into that, what is that referring to?

Mr. Organ: What is that referring to?

The Court: What statute are you referring to?

Mr. Organ: The unconstitutionality of it.

The Court: That it is unconstitutional? I would like to have the statute.

Mr. Organ: Oh, I see. I misunderstood. That is the Fines and Fees Statute, Your Honor. We will present that to the Court a little later.

The Witness: I can give it to you, Judge. It is an act of '58. I believe I have it in my chambers. I believe it is a special act. I think Mr. Gremillion might have it available.

Mr. Gremillion: What act is that?

The Witness: The act that originally gave Mr. Dowling, District Attorney, power to collect fines and fees.

Mr. Gremillion: It is in the revised statutes. It is 15:571.11.

[fol. 647] Mr. Culligan: 512.

Mr. Organ: I have a copy of it here, Judge.

Q. (Exhibiting document to witness) If you would take this, I think it has been transcribed correctly.

A. I am aware of it, yes.

Q. Would you read that and see if that is the statute. I am sure you are familiar with it.

A. I am, yes.

Q. Would you read that.

A. I have read it. What is your question?

Q. Would you read that statute please.

A. I have read it to myself.

Q. Just read it for the record.

A. I have read it for myself. You want me to read it out loud?

Q. Yes.

The Witness: Your Honor, I have been asked to read this statute. I see no purpose. I think it is a question of law. You can submit it to the Judge.

The Court: I think you have a right to introduce the statute, if you would like.

The Witness: I see no reason to read it.

Mr. Organ: I would like him to read it, because I would like to question him about it.

The Witness: You can question me about it. I have it in [fol. 648] my hand.

Q. You would prefer not to read it, I take it.

The Witness: Judge, do you require that I read the statute?

The Court: No, I don't require that.

A. I will admit that it is the statute and I have read it, yes.

The Court: It is in the testimony that you have read it.

The Witness: That is correct.

Q. Now, Judge, the first sentence of this statute is as follows—I quote—please follow me:

> "All fines and forfeitures imposed in criminal cases and prosecutions by the Courts of Orleans Parish shall upon collection be paid to the District Attorney of Orleans Parish, who shall deposit same in a special account to be used in defraying the expenses of the Criminal Courts of the Parish, extraditions and such other expenses pertaining to the operation of the Criminal Courts of Orleans Parish and the Office of the District Attorney of Orleans Parish, as in his discretion may be necessary."

[fol. 649] Now would your define your opinion of what the words "in his discretion" mean?

A. May I have it, sir.

Q. Surely (handing document to witness).

A. The word ordinarily under Webster would mean that a person has a right to do anything he wants with it, but

you haven't gone far enough, because later on in the act it says "subject to the approval of a Judge."

Q. A Judge?

A. It says a Judge, any one.

Q. It doesn't say five Judges, does it?

A. No, sir, any Judge. —because the act has a contradiction in it: It gives the District Attorney discretion, and then it takes it away from him by saying "subject to approval," so something is wrong. Whoever wrote the act up made a mistake.

Q. So—

A. That is the obvious explanation: He cannot have discretion if it is subject to approval.

Q. But you interpreted that in your favor?

A. No, sir, I interpreted it like any ordinary person who is not biased would interpret it.

Q. You don't think you are biased?

Mr. Gremillion: I move that this argument provoked [fol. 650] by Defense Counsel be stopped.

The Court: I don't think you have a right to argue a question of law. You may ask a question, you may interrogate, you may ask a question of the Judge with reference to the statute and interrogate him on it, but don't argue a question of law, because the question of law will be one to be determined by me and me alone, so I don't care about arguments as to the law.

Q. Now you will acknowledge, will you not, Judge, that when it says "a Judge" it does not mean five Judges, in the statute.

A. I certainly acknowledge that.

Q. How long have you been Judge?

A. December 11, 1956 I took office.

Q. Before that you were Assistant District Attorney?

A. That is right.

Q. How long were you an Assistant District Attorney?

A. Approximately eleven and a half years under five different District Attorneys.

Q. Now would you say that the one year period beginning November 1, 1961 through October 31, 1962 would be

a fairly representative period of the operation of your Court?

[fol. 651] A. Well, I anticipated you might ask that question, so I have prepared a survey of my docket for three years, so rather than take one year when we had a change of administration, why don't you ask me if a fair period of three years would be fair, and I will say yes.

Q. Well, Judge, the thing about this hearing is that I am the one that asks the questions and I believe you are the one that answers them.

A. Very well.

Q. So will you answer my question, please.

A. Would last year be a fair indication of the activity of the docket of Section "C"?

Q. Not last year, the year beginning November 1, 1961 through October 31, 1962. Would that be a fair representation of—

A. Well, ordinarily if it did not have a change of administrations, which you had in that period, I would answer yes, but you did have a change of administration, and when you do have a change of administration it takes the new assistant coming into your Court two or three months to get acquainted with the docket, so under ordinary circumstances when you do have a change of administration and a change of assistants, it would not be a fair year. If you take a year when things are running ordinarily, normally, then that would be a fair year, but a change of [fol. 652] administration would not be a fair year.

Q. What statistics would that change, Judge?

A. I beg your pardon?

Q. What statistics about the operation of your Court would that change, because of the change of administration during that year?

A. Well, I am glad you asked that question, because I think I can give you an answer. The first thing, when Mr. Garrison took office on May 7, 1962, most of the Criminal District Courts did not have a jury in May because the outgoing assistant was not being retained, so a jury docket was not set for May, apparently not set for June, because the assistant hadn't familiarized himself with the docket so he could set a jury docket. July and August

are ordinarily vacation months, so September the assistant might become acquainted with his docket so he might be in a position to set a jury docket in October. However, with respect to my particular Court, I did have a jury in May, I did have a jury in June. In fact, to give you a complete answer to your question, in May of 1962 I had jury dates set for eight specific days. The jury was present in my Court on eight specific days. I do not know—I believe Mr. Alvin Oser—no, Mr. Oser was the assistant assigned in my Court—41 jury cases were set for trial, he actually went to trial on one case, he had 14 felony [fol. 653] pleas or felony cases, he had Judge cases set on 13 dates, there were nine misdemeanor pleas, there were 35 cases nolle prosequied and dismissed, there were 14 arraignments, there were three hearings in Court on pre-sentences, there were three bond forfeitures, there was one motion to suppress, there were eleven continuances filed by the State, and the number of cases allotted to the Court that month in May was 55 and the cases we disposed of, either misdemeanor or felony, was 61 cases.

Now let's get down to June, which was the second month Mr. Garrison was in office. In this particular Court, we had nine jury days. The jury was present in this Court on eight of those nine days. Mr. Oser tried three jury cases in June. Thirty-seven jury cases were set for trial, there were 19 felony pleas on Judge days; there were 28 cases set for Judge days, that is, on Mondays and Fridays; we had three Judge trials, there were 13 misdemeanor pleas, there were three felonies-misdemeanors (sic) nolle prosequied or dismissed, there were 60 arraignments, there were 26 hearings for over of the particulars, pre-sentence hearings of the corpus, there were nine bond forfeitures, and I might state that Mr. Garrison at the time complimented Mr. Oser that in a short month and a half that Mr. Oser was in my Court, at that time we had moved and forfeited 11 bonds, and he was very happy about that. There were two fugitive hearings, [fol. 654] 11 bond reductions, we had eight hearings on motions to suppress, we had three Traffic Court, Municipal Court, appeals, 44 continuances, we had 66 cases allotted

to the Court in the month of June, and we disposed of 72 cases.

Q. So you did have—

A. So, ordinarily speaking, the other Courts were not in the same fix that I was in. We actually were working the first two months Mr. Garrison was in office. In fact, we did quite a bit of work, and I might state that Mr. Garrison—and I am not saying this complimentary, but when he took office he said, "I am going to put an experienced man in your Court, because I know you work hard, you are not afraid to work, and I know you can get rid of the business," and he made that remark to me himself.

Q. Well, therefore, I believe the import of your testimony is that you didn't suffer at all as a result of the change of administrations, you kept on doing business as usual?

A. That is correct, that is correct.

Q. By the way, on those jury cases that Mr. Oser tried, was any of them lost?

A. I don't remember the outcome of them. I think we can get the record and find out.

Q. It's not that important. Now, Judge, I am curious [fol. 655] about your anticipating a question I asked you. I believe you stated that you did.

A. Well, I prepared a three-year survey of my docket because I presumed you were going to ask me about the docket.

Q. Did you have a meeting with anyone last night around five o'clock with respect to this case?

A. You mean when the Court recessed yesterday?

Q. Yes.

A. At five o'clock?

Q. Right after Court recessed yesterday.

A. Did I have a meeting?

Q. Were you involved in any meetings?

A. Who do you mean by the word "involved"?

Q. Well, did you attend any meetings?

A. I attended—it was not a meeting, if that is what you want to know.

Q. Tell us what it was.

Mr. Gremillion: If Your Honor please, I object to that for the particular reason that—

Mr. Organ: If the Court please,—

Mr. Gremillion: The Prosecutor has a right to confer with the State's witnesses at any time. That is what he is trying to bring out. I have talked to the complaining witnesses, the Judges in this case, 15 or 20 times and publicly [fol. 656] admitted it, but that has got nothing to do with the case. We are privileged to discuss these matters.

The Court: Off the record.

(Discussion off the record.)

Mr. Organ: I want to know what it was.

The Court: I don't think you have a right to go into—off the record.

(Discussion off the record.)

Mr. Gremillion: If Your Honor please, I ask that the question be stricken from the record.

The Court: I can't strike the question, but I can sustain your objection.

Mr. Gremillion: I thank Your Honor. That is sufficient.

Q. Now, Judge, do you make paroles in vice cases?

A. Yes, sir, I do. In fact, I made some for Mr. Garrison and Mr. Trent in the last six years.

Q. They are attorneys, are they not?

A. They are. Usually 99 percent of them, I make them for attorneys.

Q. Now do you make paroles for people with whom you are not familiar?

A. Yes, sir, many times.

Q. Total strangers?

A. Certainly, if they are represented by an attorney [fol. 657] that I know.

Q. No. I don't mean the accused; I mean paroles to. I am talking about do you make paroles to people with whom you are not familiar.

A. No, sir, no, sir. You mean a person calls me up and asks me to parole someone else, and I don't know that person?

Q. Yes.

A. No, sir. Unless they identify themselves and say they are an attorney, I may not personally know them, may know them by reputation, or I may know a close friend of theirs, and I will parole them. I don't have to know them intimately. I may have heard of them. I have had many an attorney call me up and ask me to make a parole. I would ask him to identify himself. If I recognized the name, I would say, "I haven't had the pleasure of meeting you. Apparently you don't practice criminal law too much." And he would say, "No, I don't." He is a civil lawyer. I don't know him personally, I know his name, and I will do him the courtesy as an officer of the Court and I will make the parole.

Q. How about non-attorneys, laymen?

A. Yes, sir, I have made paroles for laymen plenty.

Q. But not to strangers?

[fol. 658] A. Ordinarily not to strangers. I don't ever remember making a parole for a stranger. I may have, but I don't remember it. If I did, it would certainly be an exception.

Q. Well, would you make a parole to someone other than a lawyer?

A. Unless you had some degree of confidence in that person, certainly not, because they vouch for the appearance of the person you parole.

Q. Now, if I advised you that the arrest book, Arrest Book No. 601 of the Second District Station, indicates that you paroled Gona Robertson, who was arrested for—

A. Robertson? What is the name?

Q. Gona, G-o-n-a. —arrested for robbery to a Rip Roberts, would you recall that incident?

A. Yes. I sure am glad you asked me about it. This is a mistake. Mr. Roberts appeared before me—it was in the paper—it's incorrect. If you will check the book, you will find out it was not Judge Haggerty.

Q. That was not Judge Haggerty?

A. No, sir. In fact, it was Judge Bagert. They get Haggerty and Bagert mixed up like hags and bags. (Laughter) I happened to call Mr. Roberts in my chambers after that appeared in the paper. Mr. Roberts said I never [fol. 659] have made a parole for him. I know him by the

way and I know his brother, but I do not remember ever making a parole for him, and he stated to me privately that it was a mistake. I took it up with the other Judges and found—even if they've got my name on the book, they made a mistake, which is not the first time they have done it, Mr. Organ. I will tell you many a time they have put Judge Bagert's name for my name and my name for Judge Bagert's name, so it's happened on many occasions.

Q. All right. If Book No. 601-A at the Second District showed that on 7-5-61, which is the same time you paroled Edward Benwoir and Taylor Wilson on lottery charges to the same Rip Roberts, you would say that is also a mistake?

A. That is a mistake. That is incorrect.

Q. Now, if Book No. 586-A of the First District shows that on May 15, 1961, which was not at the same time as the previous one, that you paroled a Wilbert Massey, who was also charged with lottery, to a Rip Roberts, would you say that was a mistake?

A. Sir, I will tell you that I have never made a parole for Rip Roberts, and I had him in my chambers and asked him the question, and he told me he has never called me at any time to make a parole, so I have not made a parole for Rip Roberts at any time.

[fol. 660] Q. Now, Judge, if the records of Book 586-A of the First District Police Station show that on May 24, 1961 at 1:10 o'clock a.m. a Wilbert Massey was arrested and at 1:20 a.m. that same day, 10 minutes later, he was paroled by you to Rip Roberts, would you say that was a mistake?

A. Yes, sir, it is a mistake.

Q. Now, Judge, do you know Jerome Conforto?

A. Yes.

Q. Are you aware of the fact that he was an owner of Madame Francine's, which is a Bourbon Street clip joint?

A. No, I was not. I have never been in it.

Q. In 1961?

A. No, I have never been in Madame Francine's, but I know Jerome Conforto and I happen to have gone to high school with his brother, Peter Conforto.

Q. Now do you recall making parole to Jerome Conforto for Salvadore Amarena for B-drinking and theft of $600.00 on 11-6-61? Do you recall that?

A. 11-6-61?

Q. That is indicated in Book 599-A of the First District.

A. I don't think I recall it, but I may have made the parole. If Jerome Conforto had called me to make a parole, and he is known to me, I could have made that parole, [fol. 661] yes.

Q. Now your testimony is that you have no knowledge whatever of his ownership in any strip joints?

A. No, I didn't tell you that.

Q. Oh.

A. I said I have no knowledge that he owned Madame Francine's. I have never been in Madame Francine's.

Q. I see. Do you have any knowledge at all that he owns any strip joints?

A. It is common knowledge in New Orleans among anybody that has lived here long enough that the Conforto family has always been in the night club business, they have owned many night clubs, and changed ownership. It is common knowledge that they have had any number of night clubs. Several brothers and the father, the old man, owned places. Certainly I am acquainted with that fact.

Q. Are you aware that in those places there have been many arrests for B-drinking and roll jobs?

A. Personally aware?

Q. Generally aware.

A. Generally aware?

Q. You never heard of it?

A. You asked if I am aware of raids in his particular places? I am aware of raids on Bourbon Street and Canal Street, but the particular clubs—I haven't paid attention [fol. 662] to what clubs were raided.

Q. Now, Judge, do you know Michael Roach?

A. Certainly I know Michael Roach. I convicted him in Court years ago.

Q. Did you?

A. That is where I met him, in Court, by the way.

Q. I see. If the records at the Fifth District Police Station, Book No. 624-A, showed that at 11:00 p.m. on 6-8-62 he was arrested for allowing prostitution on the premises and you paroled him to yourself, would you agree with those records?

A. Yes, I would agree to that.

Q. You knew Mike Roach had a record at that time, I take it?

A. Yes, sir, I am aware of that fact. I believe he served time in the Parish Prison. I don't believe he ever served time in the Penitentiary. It was not a felonious record but a misdemeanor record, as far as I know.

Q. Do you recall what place he allowed B-drinking on the premises?

A. No, sir, I do not.

Q. But you must have known of the charge at the time you allowed—

A. Yes. I don't parole a person unless I know what they are charged with.

[fol. 663] Q. Now, Judge, is it fair to state that you had a certain amount of confidence in Mike Roach when you paroled him to yourself?

A. Well, I had enough confidence to know he wasn't going to leave town. I knew he would make bond and he would appear in Court to make the charges, which is all I ask of anybody when I make a parole. I am not trying to be a character witness for him, if that is what you want.

Q. Now, do you know Andrew Monte?

A. Yes, I know Mr. Monte.

Q. Do you know what business he is in?

A. Well, he has been in a lot of businesses.

Q. Tell me the businesses that you know he has been in.

A. I knew he was in the music box business at one time and at one time he had some saloon across from the New Orleans Hotel, the Ship Ahoy or something. I know he is around the Court, he signs bonds for quite a number of people. I don't know whether he is a professional bondsman or not. He is around the Court quite often. I see him. Whether he signs bonds for free or charges people, I don't know, but I see him around the Court.

Q. Can you tell me whether you are aware of the fact that Andrew Monte is in the pinball and has been in the slot machine business?

[fol. 664] A. No, sir, I can't tell you that.

Q. You have never heard of that?

A. I heard he was in the juke box business. You say the pinball business?

Q. Pinballs and slot machines.

A. Slot machines? Is that a business in New Orleans?

Q. Pinballs, and slot machines in the past.

A. Well, if you were in the District Attorney's Office eleven and a half years, you would get to know a lot of things about a lot of people. My answer is yes, I think I knew that he was in the pinball or juke box business, but I didn't know he was in the slot machine business.

Q. Did you know—

A. I didn't know it was permitted by law.

Q. Did you know that he had been indicted for trying to strong-arm his slot machines and pinballs into different bars?

A. You say indicted?

Q. Yes.

A. Well, anybody can be indicted. Was he convicted?

Q. Do you know that?

A. No, sir, not particularly.

Q. You did not know that. Did Andrew Monte ever come [fol. 665] to see you about sentences in the case of Jane Lee, charged for prostitution?

A. (Referring to file) I happen to have the record. If you want the name of the case it is 174-831. It was a case in Section "H." Judge Brahney was on vacation. Mr. Monte was the one that signed the bond for Jane Lee, and she pleaded guilty to the crime of 82, which is prostitution, and I gave her $25.00 or 30 days, and that has been more or less the same sentence that I have imposed on people charged with that offense for the last six years.

Q. Now—

A. I would increase the sentence and the fine or imprisonment if the person was an employer rather than an employee, but my policy, unless it is an aggravated case, has been consistently to give a minimum fine of $25.00 or 30 days, so what I did in that case I have done for six years.

Q. In other words, for the past six years you have had a practice of giving a minimum fine, except in aggravated cases?

A. That is correct, sir. I will state that again.

Q. Do you know Mike Callia?

A. Yes, I sure do. I met Mr. Callia when I convicted him in Judge Cocke's Court in Case No. 149-309 for lottery, and I would like to give a further explanation of that answer. [fol. 666] Q. Go ahead.

A. In 1955 when Mr. Hubert was District Attorney, and Mr. Garrison was also an Assistant District Attorney, I initiated, investigated, processed all of the records, prepared the cases for trial, and prosecuted lottery owners, not peddlers, not vendors, and convicted, I believe—I am not aware of the exact number of them, but that was the first time in over a hundred years or so that lottery owners were brought to trial, were convicted, did appeal to the Supreme Court, and Mr. Hubert publicly gave me the entire credit for the whole operation. Mr. Callia was one of the people I convicted in Section "E," Judge Cocke's Section, and I believe Judge Cocke gave him a year in the Parish Prison, so that is where I first met Mr. Callia, and I have seen him on many occasions since then, on many occasions since that date back in 19— I believe it was '55. That is seven years ago, about seven years ago.

Q. Have you ever attended parties where Mr. Callia was the host?

A. Yes, I believe I have.

Q. How many?

A. I don't know. You are talking about the induction ceremonies for Judge Schulingkamp?

Q. That and any other parties you may have attended. [fol. 667] A. I may have. I may have on occasions, yes.

Q. And, of course, since you first met him at the time you prosecuted him, you knew that he had been a lottery owner? Is that not so?

A. He was convicted as a lottery owner, took an appeal, and the Supreme Court affirmed it. That is correct.

Q. Now, Judge Haggerty, would you tell us if you are acquainted with Francis Giardina?

A. Yes, yes, I am acquainted with Francis Giardina. In 1949 when I was an Assistant District Attorney, I aided in the prosecution of Mr. Giardina. He was convicted for burglary, got 10 years, so I met him in Court too, but I

have known him since 1949, up to this date, which is about 13 years.

Q. You are aware that he has had approximately four or five sentences to Federal institutions for narcotics violations and time in Angola for a felony?

A. I am aware that he is an ex-convict, yes, sir, I am aware of that.

Q. Now do you see Francis Giardina socially?

A. No, sir. Socially? No, sir, never.

Q. You have never seen him socially?

A. No, sir.

Q. You never drank with him?

A. I have been in a place operated by a lady named [fol. 668] Miss, Russell, used to be Musso's for years on Tulane Avenue. He happened to be in the place. Frankly, I was in there with a group of Assistant District Attorneys, Judge O'Hara and Judge Bagert. We all had drinks together. He was in the place, but the fact that a person is in a physical lounge, that doesn't mean that I am socializing with him. If he is in there when I got there, I don't see how you can interpret that, if I take a drink with some attorneys and some judges and he happens to be in there, that I am socializing with somebody that happens to be in there.

Q. Now is that the only time you saw him in a bar or restaurant?

A. You mean in Lois's Lounge?

Q. Or any other place.

A. Well, he has a restaurant on Rampart Street. I have eaten in that place.

Q. On many occasions?

A. I have been in there with my wife on five or six occasions I would say.

Q. Now when you were in there on those occasions, Judge, were you not very friendly with Francis Giardina?

A. I paid my bill. If we were that friendly, I think he would have put it on the house. (Laughter)

Q. Let me ask you this, Judge: Are there any places where you go where you don't have to pay for your drinks? [fol. 669] A. No, sir, I do not.

Q. Do you always pay for them?

A. Yes.

Q. On every occasion?

A. Yes, sir.

Q. By the way, did you know the record of Jane Lee when you sentenced her to the minimum fine?

A. No, sir, I did not ask for it, but I have checked it since then. I found out she has pleaded guilty on about four or five occasions for prostitution.

Q. You did not ask her record when you sentenced her?

A. No, sir, I did not. If it was a more serious offense, if it was a felony or an aggravated misdemeanor, I would have asked the District Attorney to see her record, but I did not ask for the record in this particular instance.

Q. Judge, were you particular with the previous District Attorney's administration on the question of expenses coming out of the Fines and Fees Fund?

A. I would say generally I was. I will tell you one thing: Very few of the motions were brought to my Court, because I am so far distant from the District Attorney's Office. It is just a matter of practicality that they would have gone into one of the other Courts, but I have signed some of [fol. 670] the motions presented to me during the administration of Mr. Dowling.

Q. (Exhibiting document to witness) Now, Judge, I hand you a photostat of what appears to be a motion which you signed for extradition expenses. Do you recall that?

A. My signature does appear on the motion, yes. Yes, this was a motion on an extradition matter that Mr. Dowling presented to me for my signature to reimburse Assistant District Attorney Burton Klein for sums expended over and above the amount of money that he was originally allocated, and I accepted the motion presented by the District Attorney, and I signed the motion. That is correct.

Q. All right. Now, Judge, what was the total amount that that extradition cost? I think it will show on the back.

A. I can't verify this. My signature does not appear on this. This is someone else's figures. I don't know what it cost.

Q. Well, this is attached—in other words, do you deny that this motion as presented to you showed that the total expenditure was $1,868.19?

A. Well, I can't verify it, but, if this was attached, if this is one part of the motion, it does have on it—

Q. (Exhibiting document to witness) This is the origi-
[fol. 671] nal, if you want to look at it. It is certified by Mr. Klein.

A. It says the amount of $1,868.19—that is what appears on this document—but I cannot verify it or not verify it.

Q. All right. Now does it not also show one item of entertainment and meals for two assistants and police required to be with the assistants for the prisoners, $216.00?

A. That is correct.

Q. Can you tell us why you would send two Assistant District Attorneys on an extradition proceeding, why one single District Attorney is not sufficient?

A. Well, I happen to be in charge of—

Mr. Gremillion: If Your Honor please—I assume the Court will allow this—I just want to say that we are going very, very far afield. The Judge has nothing to do with extradition, it is none of his business. Extradition is strictly the work of the District Attorney. I am going to object to it because it is improper, it is too far afield.

Mr. Organ: This Judge has already testified that he was strict with the previous—

The Witness: You asked was I acquainted.

Mr. Gremillion: I am not going to let him use words he didn't use before. That is a violation of the Code.

[fol. 672] The Witness: You can't assume I gave an answer when I didn't give it.

The Court: What the Attorney General said is that you should not try to repeat your interpretation of the testimony of Judge Haggerty.

Mr. Organ: I am not.

The Court: His testimony is in the record. As I see it, gentlemen, on this particular question of the application or rather of the approval of the extradition proceedings, that is a matter for discussion with the Judge who signs it. He has every reason to presume that the account is correct if it is furnished to him by the District Attorney, and, if he has some reason why he should go beyond the account, which I believe is itemized—I am not sure, but I believe I

saw though that it was itemized—he has every reason to believe the correctness and the veracity of that statement that was submitted to him. I don't think—as far as I am concerned, I don't think it will prove anything particularly that there might be an exaggeration in it other than the fact that perhaps, if there was any fault with the extravagance of the account, it would be that of the District Attorney's Office rather than that of the Judge. However, I will say this, that I have allowed just a little more liberality on both sides in this case than I would ordinarily allow because I understand the importance of it to both sides, and [fol. 673] when I say both sides, I mean as between the Defendant and the State, and I think that he can ask the Judge about the accounting. I am going to allow him to ask it, because I allowed it of the other Judges, and then I am going to allow the Judge to make his explanation of the matter. Go ahead and answer the question.

Q. Would you answer the question.

The Court: Would you like to have the question read back?

The Witness: I would like to have it read back.

Q. May I restate it?

A. Would you please, sir.

Q. May I replace it with this question, Judge: You were an Assistant District Attorney for 11 years?

A. Yes.

Q. Now could you tell us why it would be necessary to sent two Assistant District Attorneys as well as police to New York to extradite one man?

A. Well, that is a matter in the discretion of the District Attorney, and it would depend on the complexity of the case, but I was in the District Attorney's Office when on many occasions two Assistants went on extraditions. Mr. Guy Johnson and myself went to Georgia to get two detectives out of jail. They had put the detectives in jail that we had sent to Georgia to get a murderer back, and Mr. John- [fol. 674] son and I went to Georgia. We stayed there 10 days. They almost put us in jail. On many occasions I went with another Assistant when I was in charge of the extradition. It is unusual—it is not the usual case—but there

are occasions when two Assistants can be very, very helpful if it is a very important extradition case to bring back the prisoner.

Q. This is in your Section. Can you tell us about this case?

A. The Gaillard (?) case? Yes. I remember the case. He was convicted by the way. They brought him back and he was convicted. He is serving time in the pen.

Q. What was the charge?

A. Armed robbery of the Horseshoe Pickle Works on Tchoupitoulas Street.

Q. Now do you know of any extraordinary legal difficulties in getting this extradition?

A. I don't recall all of the intricacies of it, but I understand he had an attorney representing him, and he was given—Mr. Klein and Mr. LaCour—I believe those were the men who went up there—they thought the man was going to come immediately back, but when they got up there they found out that he was resisting extradition, wanted a hearing. That is as far as I recall. I know they did not go up and get him back immediately like they thought they were [fol. 675] going to. They expected some trouble, but they ran into more trouble than they had bargained for, and that required them to stay up there a much longer period of time, which has happened to me I might state.

Q. How long did they stay up there?

Mr. Gremillion: Judge, this witness can't possibly answer that question.

Mr. Organ: It is in this document.

Mr. Gremillion: Let the document speak for itself. The Judge has said he is not responsible for this, it is the District Attorney, and you keep bringing it up.

The Court: Why don't you just introduce the document if you have any questions about it. Does the document show the number of the case?

Mr. Organ: Yes.

The Court: Why question the witness as to a particular feature of it?

Mr. Organ: Maybe I can go at it this way:

Q. Does the document not show it covered the dates of November 13 through November 18, 1960?

A. I am going to repeat what the Judge said: Let the document speak for itself. Why ask me to repeat something that is in print.

Mr. Organ: If Your Honor please, I am going to ask the Court—

[fol. 676] The Court: Perhaps, Judge, you can answer that the document would show that.

A. I can't verify it.

The Court: I still say, Mr. Organ, that I think you should introduce the document in evidence. Ask him that question for the purpose of identification of the document.

Mr. Organ: Yes, sir.

The Court: But still as to the details of the document, the document will speak for itself.

Mr. Organ: I don't want to delay matters, but I am trying to lay a foundation to examine him on other parts of this document.

The Witness: Mr. Organ, the document is a bad photostat. You will agree with me that it is superimposed—

Q. Yes.

A. I can make out the date November 13 to—something—I don't know whether it is the 16th, the 18th, the 19th or what.

Q. It looks like the 18th?

A. Well, I can't make it out either.

Q. All right. I do have the original of this, if you would look at it (exhibiting document to witness). See if that is not the original of this photocopy, which is a little clearer.

[fol. 677] A. That seems to be a typographical error there. Is that the 18th or 19th, or is it the 10th?

Q. Well,—

A. Do you agree with me?

Q. —supposing we go to another subject then.

A. All right.

Q. I think the document will have to speak for itself, just as you say. Now, does it show that their hotel bill was $311.94?

A. Now the motion that I signed, Mr. Organ, was to give the advance or the differential. Is that correct?

Q. Yes, sir.

A. I signed the motion for $386.94 on the motion of Mr. Richard A. Dowling. Now are you questioning that I explain certain expenditures made by Mr. Klein when he was in New York or wherever he was?

Q. I am asking you when you approved this—

A. Approved what? Now let's talk about what I approved.

Q. Didn't you approve this motion to pay this man an additional $376.00 when he had already received some $1,400.00?

A. Where did he get the original money? Where is that motion?

Q. Well, I have the motion here, and it appears that you [fol. 678] signed that motion too to give him an advance of $1,400.00.

A. Where is my signature?

Q. Well, this is a photocopy of the certified copy of the motion.

A. Well, it does not bear my signature. Correct.

Q. Doesn't it appear to be a photocopy of a certified copy of the original motion?

The Court: Judge Haggerty, if you would like to have the original motion before you answer that question—

A. Ordinarily it is a Section "C" case and would have been presented to me for my signature, but my signature does not appear on it. It is a photocopy of a true copy. I do not deny that my signature appears on the original.

The Court: That will not be admissible. I think you can file a certified copy. You can introduce the original and file a certified copy of it, if that is what you want. If you would like to have a subpoena for the original, I will issue that subpoena. Otherwise, if the Judge doesn't want to identify the document without his signature appearing thereon, he has a right to.

Q. Judge, you don't want to discuss this without a certified copy or the original? Is that correct?

A. That is correct. I would prefer that, and then I know what I am talking about.

[fol. 679] Mr. Organ: Now, if the Court please, we move for an instanter subpoena on these two motions at this time. I will give the Clerk both of these photostats so they will know exactly what it is the subpoena calls for. Would this witness be available when this subpoena—when we have a return on this subpoena? If that is the case, that is all the questions we have now.

The Witness: I will be available, Judge, at any time.

Mr. Organ: We reserve the right to recall him.

Mr. Gremillion: Judge, could I have just about a two-minute recess. I have some more questions I want to ask him. May we have a short, short recess?

The Court: All right. The Court will take a five-minute recess.

(Whereupon, a brief recess was taken.)

[fol. 680] After the recess.

Mr. Gremillion: Mr. Organ, if you want to question now about those motions for expenses, the Judge has the original record and you can do that now if you want to finish that before I take him on redirect.

Recross examination.

By Mr. Organ:

Q. Now, Judge, you have with you now the records that involved the *State vs. Gaillard*, (?) is that correct?

A. That is correct. I have the original record, Clerk's record 165-564.

Q. Now, there is an affidavit attached to that by Burt G. Klein, Assistant District Attorney, or a letter, is there not?

A. Yes, there is.

Q. Outlining the expenses involved?

A. That is correct.

Q. Now that, those expenses list $311.49 for hotel, do they not?

A. Yes, the letter signed by Mr. Klein lists $311.49 for hotel, that is correct.

Q. And $247 for meals?

A. That is correct.

Q. Now the period covered is from November 13 through November—what would that be—the 19?

[fol. 681] A. Either the 18th or the 19th. It is superimposed.

Q. At the latest, it would be the 19th?

A. That is correct.

Q. That is for six days. Now what does it show for transportation, taxis to and from the airport?

A. $77.

Q. And tips?

A. $38.

Q. And the next item. Please read it.

A. Entertainment, meals for two Assistants and police required to be with Assistants with prisoner, $216.

Q. Now you didn't have any compunction about signing an authorization for entertainment?

A. This expense voucher was prepared by the Assistant after he returned. These were not presented in advance. There was money advanced and this itemization was made after they returned and was made part of a motion presented to me for an additional sum of money of $396.49.

Q. Well, this is their final accounting which was presented to you to get more money—

A. That is—

Q. —for the account?

A. That is correct.

Q. Now did you question them about the propriety of [fol. 682] entertainment at the public expense?

A. No, sir, I did not.

Q. Now these letters have an item down there of miscellaneous, $79.25. Do you recall what that is for?

A. No, sir, I do not.

Q. Now, the item of $216 included meals apparently, does it not?

A. It says meals. That is correct.

Q. And then, these letters have meals up here for $247, is that correct?

A. That is correct.

Q. Now, Judge, I hand you what appears to me to be a copy of this letter with the hotel bill attached to it. Can you

tell us if that does not appear to be a copy of the letter and the hotel bill? (Exhibiting document to witness)

A. Well, the letter does not state what hotel they stayed at, but it covers the period from November 13, 1960 through November 18, 1960.

Q. Correct. Also to Burton Klein, does it not?

A. Burton G. Klein, that is correct.

Q. Now would you look at these hotel bills and see if there aren't many charges on the hotel bill for food.

A. I see restaurant, yes, several places there.

Q. And there is restaurant again?

[fol. 683] A. Right.

Q. Restaurant again?

A. Right.

Q. Restaurant again?

A. Correct.

Q. Restaurant again?

A. Correct.

Q. Restaurant again?

A. Yes.

Q. Restaurant again?

A. That is correct.

Q. Restaurant again?

A. Correct.

Q. Restaurant again?

A. Correct.

Q. Restaurant again?

A. Yes.

Q. Restaurant again?

A. Yes.

Q. Restaurant again?

A. Yes, that is correct. Everything you have stated is correct.

Q. Now, Judge, if the hotel bill was to have $311.49 also included meals from the restaurant and then in addition to that they have $247 for meals and then additionally [fol. 684] down below, they have entertainment and meals for two Assistants, $216, you would have to say that they were very liberal in food, would you not?

A. I would say yes.

Q. Did you go into that with them?

A. No, sir, I did not.

Mr. Organ: In connection with the testimony of the witness, we offer and introduce at this time as "D-19," the hotel bill, the hotel bill which the witness was examining. That is all the questions I have, Judge.

Re-direct examination.

By Mr. Gremillion:

Q. Judge, with reference to those expenses that you approved, do you know how many detectives went to New York to get that man?

A. I understand two detectives accompanied Mr. LaCour and Mr. Klein, plus a witness.

Q. That is five people?

A. That is correct.

Q. How did they go up there?

A. I understand they went by jet to New York.

Q. And, did they get the man and bring him back?

A. Yes, sir, they brought Defendant Gaillard (?) back. Five went, six returned.

Q. And, they came back by jet, didn't they?

[fol. 685] A. That is correct.

Q. And, they stayed in New York about six days?

A. Correct.

Q. And, it was a contested extradition?

A. I understand an attorney appointed in New York did question it.

Q. This would be 11 jet flights back and forth and six days in New York. Those expenses would not be excessive, would they?

A. Not to my way of thinking, no, sir.

Q. Was the man subsequently convicted?

A. He was tried by a jury of 12, was convicted and received a sentence of 18 years.

Q. Now in this case, did not the State forfeit a bond?

A. I was trying to find that, Mr. Gremillion. I think it does appear in the case. This man Gaillard (?) was out on a $15,000 bond. When he did not appear, it would ordinarily be my procedure to forfeit his bond and I believe I did do it in this case. I was trying to do something.

Q. Do you recall how much the bond was that was forfeited?

A. I will let you know in two seconds. The Gaillard (?)—James Gaillard (?) was out on a $3,000 bond and when [fol. 686] he did not appear, it is my recollection that I increased his bond to $20,000 and I believe the record will further reflect—I don't have it in front of me. It would ordinarily reflect that I would have forfeited the bond of $3,000 at the request of the State.

Q. So, the State made a little money on the case, didn't it?

A. I don't know if they have collected it or whether it was later returned or what, but ordinarily, the State should have made $3,000.

Q. Now, Judge, when cases are fixed for trial after a new District Attorney comes in office, whose responsibility is that for fixing those cases?

A. The complete responsibility of the District Attorney through his Trial Assistant.

Q. Who nol. pros.'es cases?

A. The District Attorney is the only person who is authorized except in rare cases on the pleading where the Court is required by law to enter a nolle prosequi, but I would say better than 99 cases out of a hundred, the District Attorney has complete authority to nolle prosequi cases.

Q. Isn't it a fact that the only time a judge can order a nol. pros. is when prescription is involved?

A. That is correct.

[fol. 687] Q. Otherwise, it is the sole responsibility of the District Attorney?

A. That is correct.

Q. Now when bonds are forfeited and collected, where does that money go?

A. Under the present setup, it goes to the District Attorney.

Q. And that is why he was so happy Mr. Oser had forfeited about 18 cases, is that right?

Mr. Organ: Just a minute, Judge, I object to that.

The Court: Objection sustained. I don't think he can give any—

Mr. Gremillion: The only question was about his cross-examination.

The Court: All right.

Q. Judge, by virtue of your office, are you a member of the Orleans Parish Criminal Court of Appeal?

A. Yes, sir.

Q. How many judges constitute that Court?

A. Three judges, Sections A, B and C.

Q. Now all this testimony about making paroles to different people, when you made those paroles, was it according to law?

A. Yes, it was.

[fol. 688] Q. When you investigated the lottery cases, when you convicted all these lottery owners, who did you use as investigators?

A. I used the ordinary members of the New Orleans Police Department plus State Police plus certain members that worked for the State Employment Agency.

Q. Did you use any members of the District Attorney's staff, such as Assistants and so forth?

A. Not to my knowledge, no, sir.

Q. Do you have any animosity towards Mr. Garrison?

A. Well, except for the defamatory statements recently, Mr. Garrison and I were very close friends. In fact, we were particularly close. I even had my name on his law office door. I was asked by him at one time to be Godfather for his child. I considered myself a very close, personal friend of the Defendant and that is why I am amazed that he would insist on such defamatory statements against me particularly.

Q. Now, Judge, in the case of Callia and Giardina and all these cases that he talked to you, questioned you about, when you granted parole, did any of those characters exercise any influence on you in any of your decisions as a Judge?

A. Never.

Q. Did they exercise any influence on you in voting for [fol. 689] the five-man rule on the approval of motions for the Fines and Expenditures accounts?

A. No, sir, not at all.

Mr. Gremillion: That is all.

Further Recross examination.

By Mr. Organ:

Q. Judge, did you ever complain to the District Attorney's office, this District Attorney's office, that they were not setting cases on the docket in your court?

A. No, sir. I never made any such complaint. In fact, I would like to compliment Mr. Oser and Mr. Foto. I think they have done an excellent job in my court with the system in vogue. The question was, so many cases are continued because the Assistant District Attorney does not have sufficient time to properly prepare his cases like it was done previously.

Q. Well, now, I believe you testified, did you not, that only five out of 11 cases that were continued were continued at the request of the State?

A. Well, now you are talking about one particular month, but going over a long period of time when 47 cases are set for a month, for instance, and you only go to trial on one case, of course, you may have 10 or 12 pleas of guilty, but that leaves about 32 or 33 cases which are continued either by the Defense or the State.

[fol. 690] Q. But, didn't you—

A. All right.

Q. —didn't you testify what was a representative month that only five out of 11 of those continuances were requested by the State?

A. I don't believe I brought in the question of who continued the cases. I was talking about the months of May and June of 1962, after Mr. Garrison took office and I stated that this Court had jury in those two months and I stated that in May we tried one case. We got 14 pleas of guilty—that is, 15. We set 41 cases, so 15 from 41 is 26, or 36—36—26 cases were continued. That is, 36—26 cases. 26 cases were continued. Now the next month—

Q. What about the next month?

A. —the next month there were three jury trials, 19 felony pleas. That is 22. 22 from 37 would leave 15 cases that were continued that month either by the State or the Defense.

Q. Do you have the information on who continued them?

A. It would be in the records, the various records would show—

Q. You do not have that there?

A. No, sir, I do not know whether they were continued [fol. 691] by the Defense or the State.

Q. Now you said you used people from the State Employment Agency to make the investigations in the lottery?

A. Yes, sir, I did.

Q. Well, they are not members of the Police Department, are they?

A. No, sir. A Mr. Walter Plotkin (?) was his name, a member of the Louisiana State Employment Service.

Q. And you used the State Police also?

A. Lieutenant Joseph McDonald of the State Police, yes, sir, I did.

Q. And, you are aware of the fact, of course, that the District Attorney's office, of course, is a State office?

A. I understand the District Attorney's office is a parochial office.

Q. One in the Parish of Orleans?

A. It is considered a Parish office, paid both by the City and the State. It is an unusual situation.

Q. You are also aware, are you not, Judge, that none of the money which was requested for these vice investigations was for salaries, but it was the money that was spent in these places, some of which was used for evidence and some of which, of course, produced no results, you are aware of that?

[fol. 692] A. I understand that at no time has it ever been, even by inkling, has any of the money been used to pay any salaries with one exception, that was to give, pay to the eight police officers $50 a month extra, which the Judges refused to pay, so that would be considered salary but it was spelled out what it was for. At no time was there any subterfuge that the money was being used to pay any salary. I would agree with that statement.

Q. Now, Judge, there has been absolutely nothing that you know about Jim Garrison which would indicate any malice towards you with the exception of, as you stated, the statement which this case is based on?

A. That is correct except for this case, I thought we were very close friends.

Q. Now—

A. In fact, I voted for him last time. In fact, I voted for him when he ran against Judge Platt and in fact, last time he ran for District Attorney I was in his office trying to assist him in any way I could and I distributed many of his cards to a lot of friends of mine.

Q. Now, speaking of Judge Platt, are you aware of his trial record in his Court?

A. I think Judge Platt should answer himself. He is going to be a witness.

Q. You don't want to answer that question?

[fol. 693] A. I would prefer not to.

Q. All right, sir. Now are you aware of this fact, Judge, that all of the undercover money used in the vice drive of the District Attorney, which resulted in the padlocking of five night clubs and the closing of those joints on Canal Street, was around $1,500, about $300 less than that one extradition proceeding?

A. I am not aware of the exact figure, no, sir.

Q. But, you understand, substantially right?

Mr. Gremillion: How can he understand that if he is not aware of it?

A. (Continuing) I am not aware of it. I do not know the exact amount advanced.

Q. You couldn't deny that, could you?

Mr. Gremillion: I object to the question. The witness has said he doesn't know. He is trying by insinuation to insinuate that he knows.

The Court: Mr. Organ, just question him on something he knows, not something he doesn't know.

A. (Continuing) I don't know the answer, Mr. Organ. If I knew it, I would answer it for you, sir.

Mr. Organ: No further questions.

Further Redirect examination.

By Mr. Gremillion:

Q. Judge, I have one further question I want to ask you. [fol. 694] A minute ago in answer to the question by Mr. Organ, you said that you knew of no reason why Mr. Garrison would make a defamatory statement. Now does that include all of the other additional statements that he has made?

A. Yes, sir.

Q. You know of no reason why he would do that to you?

A. I know of no reason whatsoever, sir.

Mr. Gremillion: That is all.

(Witness excused.)

Mr. Gremillion: Call Judge Bagert.

The Court: Do you want to go on? You have about ten minutes.

Mr. Gremillion: We may as well use it, if you don't mind.

Judge Bernard J. Bagert, a witness called by and on behalf of the State of Louisiana, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Gremillion:

Q. What is your name, sir?

A. Bernard J. Bagert, Senior.

Mr. Gremillion: Off the record.

[fol. 695] (Discussion off the record.)

Q. Judge, what is your occupation?

A. I am Presiding Judge of Section H of the Criminal District Court for the Parish of Orleans.

Q. How long have you held that office?

A. I took my oath of office on July 9, 1956 and have continuously held that position to this date.

Q. Where were you born, sir?

A. New Orleans, Louisiana.

Q. Do you know Mr. Jim Garrison, the District Attorney?

A. Yes.

Q. Is he in the courtroom?

A. Yes.

Q. Will you point him out.

A. That is he right over there (indicating) standing in front of Mr. Pertuit, the Deputy Sheriff.

Q. Judge, are you married?

A. I am married to the former Philomene Schilleci. We are living together at 6300 Perlita Drive and we have four lovely children. We have a boy 19 who is a sophomore at Loyola; we have a daughter who is a senior at Mount Carmel Academy in the honor class; we have a son who is a sophomore at Jesuit High School in the honor class; and we have a daughter who is in the seventh grade at St. Pius [fol. 696] the Tenth Grammar School in the honor class.

Q. Judge, when were you admitted to the bar?

A. July 15, 1935.

Q. Where did you graduate?

A. Loyola University in June of that same year.

Q. Have you served in the Armed Forces of the United States?

A. I went on active duty in the military in 1942 and I studied at great length prior to admission to the service. I studied seamanship and navigation on my own private time and my own expense and I took an examination conducted by the United States Coast Guard in those subjects and was commissioned from civilian life as an Ensign in the United States Coast Guard on June 19, 1942 and I went on active duty about July 5 of that same year.

Q. You hold an honorary discharge?

A. Yes, indeed. I was Executive Officer of two L.S.T.s, land and ship tank, sometimes referred to as long, slow targets. I participated in action in North Africa, the follow-up invasion of Sicily and Salerno, complete invasion of Anzio and complete invasion of Normandy in June of 1944.

Q. Judge, have you held any other public office other than that of Presiding Judge in Section H?

A. I was general counsel for the Fire Marshal for [fol. 697] the State of Louisiana for three years. I was assistant general counsel for the Orleans Levee Board for a period of about 18 months; I was a member of the State Parish Committee, 1950 to 1952; I was Vice-President of the then New Courthouse Commission from 1950 to 1952 and I was a member of the New Courthouse Commission from 1956 until about 1960 when it was dissolved.

Q. Are you active in the American Legion?

A. Yes, sir.

Q. Judge, without enumerating all of the offices you have held in patriotic organizations, would you tell us whether or not you have held many?

A. Very, very many. It is my hobby.

Q. Are you the Chairman or President of the corporation that is going to put on the American Legion convention here in New Orleans?

A. I am the President of that corporation and I am also General Chairman of that committee, General Chairman of the convention committee. I have worked on that civic project from 1953 continuously to this date and I reached some success by having a commitment given to our corporation in 1960 and we executed a contract with a national organization last year to conduct that national convention in New Orleans September 8 through 12 of 1963.

Q. Have you held national offices in the American Legion? [fol. 698] A. I was a member of the National Finance Commission for a year or two and then I was transferred in '57, 1957 to the National Finance Commission. I am a member of the National Finance Commission. Also I am the first World War II veteran who was appointed to that Commission and for the last five or six National Commanders, I served on the Advisory Committee, National Committee for the last five or six years.

Q. Do you belong to any civic organizations in New Orleans?

A. Yes, I am an alumnus of Loyola University and I have been very active in alumni work and I was Chairman of their fund-raising drive, the Endowment Fund, in 1959.

I held office in the Blue Jay Parents Club and was Chairman of their festival on two occasions. I am a member of the Board of Directors of the New Orleans Athletic Club for the second time and I am a former Vice-President of the New Orleans Athletic Club. I am a member of the Board of Directors of the Vista Shores Club. I have had numerous other positions I can't think of at this time.

Q. Vista Shores, is that a country club?

A. That is a country club on Bayou St. John.

Q. Now who was your Assistant District Attorney when [fol. 699] you became Judge?

A. These are my own notes, Mr. Gremillion: (Referring to file.) I just want to refer to the notes. I don't need notes for this but I want to answer these things chronologically. Whereas, I was appointed in July and assumed my office—

The Court: Would you rather wait, Judge Bagert, for that? The hour is twelve o'clock and the Court is recessed until one-fifteen.

(Thereupon, at 12:02 o'clock p.m., the trial was recessed, to be resumed at 1:15 o'clock p.m.)

[fol. 700] (Pursuant to recess, the trial was resumed at 1:15 o'clock p.m., all appearances as previously noted.)

PROCEEDINGS

The Court: Are you gentlemen ready to proceed? Judge Bagert was on the stand.

JUDGE BERNARD J. BAGERT, having been previously sworn, resumed the stand and testified further as follows:

Direct examination.

By Mr. Gremillion:

Q. Judge, when you took office, who was the Assistant District Attorney assigned to your section?

A. I took office, as I said earlier in direct examination, on July 9, 1956, and I did not have a jury until November.

Actually, the Court didn't come into operation until October until October of 1956. The Assistant District Attorney assigned to my section was James C. Garrison. The minutes of my Court will reflect that Mr. Garrison made his first appearance as Assistant District Attorney in my section on October 8, 1956. Mr. Garrison served as Assistant and handled the entire docket, which was a misdemeanor docket, for October of 1956. The first jury docket conducted by Section "H" over which I presided, was in the month of November, 1956. Mr. Garrison was assigned as Assistant District Attorney to that Court. I had never presided as [fol. 701] presiding Judge until that time so I had a conference with Mr. Garrison, perhaps at his request, with reference to the setting of the docket. I met with him and we discussed what days we would work, insofar as jury days were concerned.

Mr. Organ: If the Court please, I am going to object to the contents of that conversation. That was in 1956 and it certainly has nothing to do with the issues here.

The Witness: I don't want to get in an argument with this young man.

The Court: Haven't you been pursuing that line of questioning—this line of thought—throughout this trial. If I understand you correctly, you are now examining him with reference to the approval of amounts of money being paid to the District Attorney at the time Mr. Garrison was Assistant District Attorney, is that not correct?

Mr. Organ: I believe we have gone into the approval of amounts in the previous District Attorney's office but I don't believe the Judge was getting ready to testify to that. He was getting ready to testify on the contents of a conversation between him and Mr. Garrison in 1956.

The Court: Your line of questioning has been with reference to the number of jury trials that they have held, leaving an imputation from your line of questioning that it might have been the fault of the Judges that these jury trials were not held. If he is intending to clear up the [fol. 702] question to absolve himself of any fault for the lack of jury trials, I think he certainly has a right to do that because you have been questioning throughout yester-

day and today, you have been imputing from your line of questioning that the Judges are derelict in their duty in not conducting these jury trials. That's been my impression of your whole line of questioning.

Q. Let me ask you this: What dates were fixed by Mr. Garrison with you for jury trials—what days of the week?

A. I conferred with the Assistant District Attorney and told him that it was my impression that the policy at that time was Tuesday, Wednesday and Thursday were the jury days. Mr. Garrison told me that he thought it would be more expedient to have jury days on Monday, Wednesday and Thursday because the holiday interim between Monday and Wednesday would give him an opportunity to better prepare the cases for Wednesday and Thursday on the one hand and, secondly, because he was a member of the National Guard and his military duties, or whatever you want to call it, required him to work on a Tuesday. So I said, "Mr. Garrison, what jury days do you want to have to expediently move the docket?" and he said Monday, Wednesday and Thursday.

Q. Then did you accede to that request?

A. I positively did.

[fol. 703] Q. Now, Judge, since that was arranged, has that been the policy for conducting jury trials in your section up to the present time?

A. That has been the continuous policy with a slight departure once in a while because of a holiday or something like that. Now, we pursued that in December of 1956, when Mr. Garrison, the Assistant, again set the docket for December, and he set the docket for jury days Monday, Wednesday and Thursday. I will say I was there every day, including Christmas Eve and the day after Christmas throughout the month and we were successful in bringing one case to jury trial.

Q. Judge, has that policy that Mr. Garrison arranged with you when you first took office, is that the same policy that is being pursued in your division since Mr. Garrison has taken office as District Attorney?

A. That is the identical policy. Mr. Garrison was assigned to some other—was given some other assignment in

the District Attorney's office about January of '57 and then Mr. Milton Brener was sworn in. I administered the oath to Mr. Brener, at the request of Mr. Hubert, and he was assigned to my Court starting in January of 1957 and from Mr. Brener's assignment to this day, with the acquiescence of the District Attorney assigned to my section, the jury has been Monday, Wednesday and Friday. There has [fol. 704] been some departure from time to time because of holidays and sometimes because of the convenience of the attorneys. We have had cases where—for instance, we selected a jury recently on Thursday but tried the case actually on Friday and had this jury return.

Q. Judge, have you read the statement that was made by Mr. Garrison concerning the Judges of the Criminal District Court?

A. Yes, sir, I did.

Q. I am talking about the statement that appeared in the States-Item on November 2, 1962.

A. Yes, sir, I did.

Q. Is that article true? Is that statement true?

A. It's untrue, especially in two respects. First, that the Judges are vacation minded. I know that is not true and I don't think Mr. Garrison can say it is true or any other assistant that has ever been assigned to my Court. I have been in my Court practically every day of the week and many lawyers and friends know that I am frequently in my Court on Saturdays and sometimes on Sundays. May I point out that the law requires that there be three jury terms a year. Necessarily beginning with the year 1957—January, 1957—I conducted nine jury months, to-wit: January, February, March, April, May, June, October, November, and December. I might point out in connection [fol. 705] with whether or not I am vacation minded, in rebuttal or, rather, to show the industry of Section "H", that on January 16, 1957, Mr. Milton Brener prosecuted—we tried the case of *State* v. *Harrison, et al.*, No. 154-295. We did not conclude that case until twelve-forty the following a.m. Notwithstanding this, the Court again reconvened that very morning and tried the case of *State* v. *Crystal, et al.*, No. 155-254, a case where there were numer-

ous defendants charged with violation of the State Narcotics Act and this case consumed the whole day and was not concluded until eleven twenty-five p.m. that night. The succeeding day, January 18, 1957, a Friday, Section "H" convened and went to work and handled other matters, although no jury trials were held. I want it to be noted that on Monday, February 25, 1957, Court convened at its usual hour, ten-thirty, presided over by myself, where Mr. Milton Brener, Assistant District Attorney, tried the case of *State* v. *Clifford Johnson and Adele Breen*, No. 155-342, both of whom were charged with murder. The Court worked the entire day and adjourned that night after ten o'clock p.m. the first day. We reconvened the following morning at ten o'clock in the morning, worked all the second day, Tuesday, February 26 and we concluded that murder case at twelve forty-five a.m. on Wednesday the 27th of February. That same Wednesday at ten-thirty o'clock a.m., we proceeded to try a negligent homicide case and the jury re-[fol. 706] turned a verdict that night at ten twenty-six p.m. This is what I feel is typical of the industry of my Court since I have sat on the bench.

Q. That is typical of the industry of your Court since you have been presiding?

A. Yes, sir. I might say this: In June of 1957, Mr. Hubert was District Attorney, Mr. Malcolm O'Hara was the First Assistant, Mr. Milton Brener was assigned to my section. That in the month of June, in order to facilitate the District Attorney, in order to relieve the conditions of the jail docket, I accepted the transfer of ten cases—felony criminal cases—which had been assigned originally to my late departed friend, Judge Echezabel, who was on vacation at the time. I accepted his Grand Jury for that month as a transfer and I accepted at least ten cases—felony criminal cases—and I went to trial in some and others were concluded in pleas. That same year, in August of 1957, while I was supposed to be on vacation, I sat for another Judge in his Court for two weeks, to permit him to fulfill his obligations to the United States Navy. In 1958 I held seven juries.

Q. Is that jury months?

A. Jury months. In 1958 I held seven jury months. In 1959 I held eight. I might say that in 1959 I held eight, notwithstanding a severe and serious handicap at that time. I suffered from a herniated disk in the second and third cervical vertebrae. I was hospitalized, I was in traction, [fol. 707] I was under heavy sedation from time to time, and notwithstanding that, in direct opposition to my orthopedic surgeon and my neurosurgeon, I returned to work to conduct the Court's duties.

Q. Now, Judge, are you influenced by any racketeers?

A. I am not influenced by anyone except my good conscience and the Lord above.

Q. In any of your actions as a Judge, have you been influenced by any racketeers or B-drinkers or prostitutes or anybody like that?

A. None whatsoever.

Q. When you voted for the five Judge approval rule for expenditures of fines and fees from the District Attorney's fund, were you influenced in any manner by racketeers?

A. None whatever. Nobody discussed that with me in advance or at any other time. I just felt for the proper administration of justice that it would be better if it were conducted that way.

Q. Judge, have you ever sent any directives to District Attorney Garrison on how he should operate his office?

A. I have as many problems as I can handle in Section "H" especially in these times.

[fol. 708] Q. Have you sent any directives?

A. No, I have never told him how to run his office. He runs his office at his discretion.

Q. Have you sent any messages to him, such as, "Don't rock the boat, son. You are not supposed to investigate this or that"? Have you done that to the District Attorney?

A. No, never.

Q. Judge, are you a member of the Association of Armed Robbers?

Mr. Organ: I object to that, if your Honor please. There has never been an allegation anywhere—

Mr. Gremillion: Your Honor—

Mr. Organ: Let me finish.

Mr. Gremillion: I thought you were through. I apologize. I thought he was through.

Mr. Organ: There is nothing in the bill of information where Mr. Garrison charged this witness with being a member of the Association of Armed Robbers.

The Court: Take this off the record.

(Discussion off the record.)

Q. Do you belong to any association that condones vice and crime?

A. None whatsoever.

Q. Now, Judge, you say you read Mr. Garrison's state-[fol. 709] ment of November 2, 1962?

A. Yes, sir.

Q. Now, is that statement true or false?

A. I don't remember the whole statement. I couldn't repeat it to you verbatim but anything that reflects on my industry or characterizes me as vacation minded is as far removed from the truth as we are from here to Australia.

Q. Is it true or false?

A. Positively false. As far as my having any influence or association or connection with racketeers or influenced remotely by racketeers is positively false.

Q. Judge, as a result of that statement and since it was made and published, have you been affected in your personal and public life, subjected to ridicule and embarrassment as a result of this statement?

A. I have had numerous anonymous phone calls.

Q. I don't want you to tell me what they said. I just want to know if people have criticized you and ridiculed you as a result of that statement or whether you have been held up to public scorn?

Mr. Organ: We would like to have our objection to all of the other line of testimony of this nature apply to this testimony that's about to be elicited as well, in our bill of exception.

The Court: All right. Of course, there will be the same [fol. 710] ruling.

Q. Go ahead, Judge.

A. We have had several crank calls along that line at home. It's been quite disconcerting to Mrs. Bagert. She has become very, very ill over it.

Mr. Organ: I move to strike that, if the Court please, because it does not form a part of this case.

Mr. Gremillion: That's a part of his personal hurt as a result of this thing.

The Court: I think it should be within the statutory limits.

Mr. Organ: Is my motion to strike that last answer from the record—

The Court: I think you might rephrase your question; question it within the statutory limits.

Q. Have you been subjected to ridicule, social embarrassment?

A. I have been subject to derision in a place where I have spent half of my life as entertainment and at one time when I participated a little bit in athletics, belonged to the New Orleans Athletic Club and shortly after this I have had some people say, "Why don't you go to work?" or something like that and it hurt me very deeply. Just less than two or three weeks prior to that, in this same organization, I ran for office on the Board of Directors. You may have [fol. 711] voted for me, Mr. Organ. Did you vote?

Mr. Organ: I am sure that I did.

A. You are one of the few. Eighty per cent of the people who belonged to that club voted for me and it might be good for you to know that I received more votes than anybody who has ever run for office in that club. I received eighty per cent of the votes cast and there have been some fine caliber of people who have run for office: One of the Supreme Court Justices, one of the Justices on the Court of Appeal, one of the Judges of the Civil District Court, a Judge of this Court, Times-Picayune Loving Cup Award winner one year and from 1875 to date, I received the largest number of votes and the largest percentage of votes cast. Now, whether those men were joking or they meant it, it hurt me to the quick personally.

Q. Have you been hurt as a result of the making of this statement?

A. I feel I have.

Q. Judge, have there been many instances of this sort at different times and different occasions?

A. There has been two or three, to my observation. They haven't been any more numerous than two or three for the reason that I have been so devoted to Section "H" of Criminal District Court that I haven't been around too much to socialize.

[fol. 712] Q. Has it been any more than one person?

A. Yes, it has.

Q. Has it been on more than one occasion?

A. Yes, sir.

Q. In the City of New Orleans?

A. Right, sir.

Q. Judge, have you in any way attempted to block or obstruct the District Attorney in his efforts to suppress vice in the City of New Orleans?

A. Positively not.

Mr. Gremillion: We tender the witness.

Cross examination.

By Mr. Organ:

Q. Did you understand me to say that I had voted against you in the election? I wanted to clarify that because your answer seemed to indicate that you thought I said that.

A. I really thought you said that you voted against me. I just wanted to let you know you were with the minority—only twenty per cent in that category. I'd like to think you went along with the fine, good thinking people. If you tell me you did, I want to thank you.

Q. I did.

A. Thank you, sir.

Q. Now, Judge, isn't it a fact that all of the statements [fol. 713] made to you at the New Orleans Athletic Club were made in a joking fashion?

A. I can't say that's entirely true. I can't say that that's true.

Q. They appeared to be in a joking fashion, didn't they?

A. You can't tell what a man has in his heart. I can't penetrate a man's heart and his mind but you can't joke with me about my professional qualifications and my professional integrity. You are getting into an area where I don't joke about it.

Q. But there was certainly no one there that was obviously antagonistic toward you when they made any reference to that, was there?

A. There may be some of those fellows in that twenty per cent category, I couldn't tell. The election, as you know, is conducted secretly by voting machine and I don't know which of those fellows were for me, like I misjudged you.

Q. Was that election before or after November 2?

A. The election was before.

Q. You haven't had any election since then?

A. No.

Q. So you might still carry eighty per cent or greater if you were to run again?

[fol. 714] A. I am inclined and vain enough to think if I were going to the post again, I will get ninety per cent of the vote.

Q. So you don't believe you have been hurt at the New Orleans Athletic Club?

A. I think I have been hurt by some few but I didn't have an opportunity to make a campaign. I just submitted my name and people ran with my name and subscribed to it but if I were confronted with it again, I really would make a vigorous campaign this time, to make sure that I didn't get eighty per cent just complacently.

Q. Now, those phone calls, you termed them as crank calls, did you not?

A. That is true.

Q. Have you ever had crank calls before this?

A. On occasions, yes. I have had occasion, sir, recently in the case of *State of Louisiana vs. Joshua Carter, Henry Baptiste, Lawrence Baptiste and Richard Ruth,* to receive a couple of crank calls. This case, incidentally, Mr. Organ —I don't know if you are acquainted with it—I sat every

day from ten in the morning until ten at night, including Saturday, and was ready, willing and able, and tried to persuade all of the attorneys to waive the working on Sunday and tried to get them to work on Sunday and we had a locked jury down there where the first jurors were [fol. 715] selected on Monday, November 26 and we tried the case for seventeen consecutive days thereafter, except for the two Sundays that I couldn't get the lawyers to agree to work. I was there from ten in the morning until ten at night and only one evening—although I was much older than all those young men in the case—that I chickened out. I got tired at seven o'clock one night and I asked forgiveness.

Q. It is certainly not unreasonable for a lawyer not to want to try a case seven days a week, is it?

A. No, but I was very, very much concerned about that case and about many implications which I wouldn't want to discuss in public unless you insist. I was within an inch of having a mis-trial because of its length and because of the conditions in that Grand Jury room and I lived a thousand deaths, not only handling—I say handling and that's a bad selection of words—but working with eight real talented vigorous attorneys, plus having these other factors in the Jury room.

Q. Whose office was prosecuting that case?

A. The District Attorney's office, the present administration. Mr. Frank Shea was prosecutor and he was assisted by Mr. Rudy Becker, III and was assigned to my section of the Court and, incidentally, I have great regard for his ability and particularly his industry and I might say that never once has he asked me to work that I didn't work [fol. 716] and never once has any Assistant been able to have substance to point a finger of accusation at me, that I am not ready, willing and able to work and that includes Saturdays, Sundays and holidays.

Q. By the same token, Judge, was the District Attorney's office ready, willing and able to work throughout that long time?

A. Yes.

Q. They worked seventeen days?

A. They set the docket, I didn't. They wouldn't have commenced if they didn't want to work.

Q. Judge, I believe you testified that you voted at an en banc session for the five out of eight rule?

A. Yes, and no. When you say voted, I don't want you to misunderstand me. I wouldn't endeavor as a justice officer to encroach on a legislative function, but it was the general consensus that the policy, for the protection of everybody, should be that these things should be submitted and five heads be used instead of one, to pass on some items that were presented for payment.

Q. Well now, you concurred in that policy?

A. Pardon?

Q. You concurred in that policy?

A. I concur in it now, yes. Now, as to whether or not I was at the meeting when it was voted, I am not actually [fol. 717] sure but I do concur in the policy that we ought to have some thinking on the subject, to make sure that we have more minds instead of a single one. I say I am uncertain for this reason: I was allegedly on vacation in October and I planned to leave town and I stayed in the City until the 4th. I was present at a meeting that morning and there was a subsequent meeting that afternoon. Now, my bags were packed and in the automobile and whatever time we adjourned, eleven, twelve, twelve-thirty, one o'clock, I went out to the airport to attend the American Legion National Convention. When I returned, I got on the bench and I sat in October nine days of my vacation, plus writing numerous per curiams and opinions.

Q. Incidentally, within your knowledge, are the balance of the Judges of the Criminal District Court as industrious as you have described today?

A. I don't know about the industry of the other Judges as a matter of fact, for the reason that I have not gone around to the other Judges' dockets. I hear by hearsay, if that's what you want—

Mr. Gremillion: I object to any hearsay.

Q. If it's general knowledge.

A. I say this to you: That my courtroom is on the first floor and I am not on the main thoroughfare and I

stay right in my bailiwick and try to preside over Section [fol. 718] "H" and I do not try to influence others.

Q. Let me ask you this, Judge: You are familiar with the statute providing for the fines and fees to be used for the District Attorney's office, are you not?

A. Yes, I have read it several times.

Q. And, of course, you are a graduate lawyer and a Judge?

A. Yes, sir.

Q. Would you tell us if, in your opinion, it is illegal for the District Attorney of Orleans Parish to partake undercover investigations and vice raids?

A. Before I answer the question yes or not, I might have to digress and elaborate a little bit.

Q. Proceed.

Mr. Gremillion: Would you read the question back? I don't think I understood it.

(Thereupon, the question was read to Counsel by the reporter)

Mr. Gremillion: I want to object to that because this man is here as a witness now. He is not here as Judge and the question calls for an interpretation of law, which this Court is asked to decide.

Mr. Organ: Every other Judge on the witness stand has, at the elicitation of the Attorney General, answered that question and given their opinion on it.

[fol. 719] The Court: An opinion has been given several times.

Mr. Gremillion: I didn't ask a question. He asked why did he do it and that's entirely different.

The Court: I think you might rephrase your question, Mr. Organ. I believe it's different.

Q. Well, did your opinion of the legality of the District Attorney making vice investigations have anything to do with your concurring in the five out of eight rule?

A. Yes and no. I have never refused to sign an order for undercover work that was submitted to me. I signed many of them and on one occasion I told my good friend Mr. Barry—a very good friend of mine and also a good

friend of Mr. Garrison's—when he presented me with an order, for instance, on June 8, 1962, I said, "As far as I am concerned, this is res nova. Maybe we are stretching the statute a little far." I said, "I know you are an accountant in addition to being a lawyer. I am going to sign this order no matter what you do but I suggest that you attach some memoranda showing where the money was spent, not nickel for nickel or item for item." For instance, on June 8, 1962, he brought me a memorandum from Mike Karmazin to Mr. Jim Garrison which stated:

"On Saturday, May 26, 1962, while conducting an in- [fol. 720] vestigation for the District Attorney's office relative to indecent and lewd exhibitions of females at the French Opera House on Bourbon Street, Michael L. Karmazin and Edgar A. Mouras, Assistant District Attorneys, spent the sum of $120.00, which sum was advanced by Mr. Jim Garrison. Listed below is an itemized account of the expenditures:

Jung Hotel Room	$ 7.00
Cab Fare	2.00
Drinks at the hotel	3.00
Drinks & tips in the Old French Opera House—	
by Edgar A. Mouras	24.00
by Michael L. Karmazin	21.00

(This money was spent during the period of 10:30 P.M. to 2:00 A.M. on May 26th and 27th, 1962.)

On May 28, 1962, in company with Denis A. Barry, II, the following expenditures were made while carrying out investigation and arrest relative to Carol Laine and Diana Sulla in the Circus Club:

Drinks and tips	$ 50.00
Total Expenses	$120.00

[fol. 721] I told him I'd sign it. Now, I have never refused to sign an undercover expenditure but I have since learned that I was in error and the City Charter in Act 301 of the

regular session of the Legislature of 1946 bears this out, that I was in error originally when I discussed this with Mr. Barry.

Q. Well now, you say it was an error originally. Is it your testimony that in your opinion it is illegal for the District Attorney to make undercover investigations?

Mr. Gremillion: That's the same question he asked a minute ago.

A. It is my opinion that if the District Attorney would come, as provided by statute, with an outlay of money and explanation of the expenditure, I would sign it. It is my opinion, however, that the whole fines and fees statute is unconstitutional. I would say that as long as the statute is in existence and has not been ruled unconstitutional, if some reasonable explanation was given, in advance, I will treat it with the same privilege that I do all of my work in Court and I would sign for a reasonable amount of money to be spent.

Q. Well, in other words, the only reluctance you would have to sign for undercover expenses would be proper accounting?

A. No. I do feel it is illegal. I do feel that the expenditure is illegal but rather than be in a position of [fol. 722] conceivably frustrating an investigation, I'd sign it but I do believe the expenditure is illegal.

Q. Is it because of the fact that the act is unconstitutional?

A. Right. I think the act is unconstitutional. I made research—personal research since. I do believe that it is unconstitutional, especially in view of the City Charter, especially Act 301 of 1946, which has been incorporated in the City Charter. However, if the thing was presented to me in advance, as required by this alleged unconstitutional act, I would sign an order for undercover investigations until the act is completely ruled unconstitutional by judicial authority.

Q. Well, of course, you have no way of knowing whether it will be ruled unconstitutional or not?

A. I do not. I have no powers of clairvoyance.

Q. Judge, would you have on your own motion, so to speak, initiated the meeting that resulted in the five out of eight rule?

A. Well, that's conjectural. I will say this: That some time in August, three Judges met. They believed they were the only three Judges conducting Court at the time. The reason they believed that was because the vacation schedule showed that the rest were taking a vacation in August. The fact of the matter is that Rudy Becker, III and I were [fol. 723] downstairs in our bailiwick below trying cases and working. Consequently I was not invited to that meeting. I don't know if I would have initiated it. I don't know what I would have done except that I am convinced now that the statute under which the fines and fees thing originates is unconstitutional. That is my conjection.

Q. Are you aware of the personal antagonism that Judge Bernard Cocke has for District Attorney Garrison?

A. Well, I have never heard them get together and say the things about each other that have been attributed to them in private.

Q. But you are aware there is general knowledge that Judge Cocke has antagonism toward Mr. Garrison, do you not?

A. I understand that that is so and they were really warm friends some time ago, I understand.

Q. Is it not a fact that Judge Cocke's antagonism was one of the moving forces which resulted in the en banc meeting and the five out of eight rule?

A. I don't—

Mr. Gremillion: I want the witness to answer that on his own personal knowledge and not conjecture or hearsay.

The Court: All right. Unless you know, Judge, of your own personal knowledge, you don't have to answer.

[fol. 724] A. I don't know of my own personal knowledge. The first time I had information on it was when the three Judges—three other Judges, excluding Judge Cocke and myself—I believe Judge Wimberly, Judge Schulingkamp and Judge O'Hara were concerned about some alleged elaborate expenditures, and they agreed they were not going

to assign any more moneys out of fees, fines and forfeitures until they could have a meeting of all the Judges.

Q. Who provoked that meeting?

A. I don't know. I am inclined to believe that the meeting was called by the Senior Judge but I don't know. Ultimately my notice came from the Senior Judge.

Q. Isn't it common knowledge, Judge, that Judge Cocke was one of the moving forces in bringing this thing to a head, which resulted in the en banc meeting and the five out of eight rule?

A. I don't know that that's entirely true. The Judges felt quite concerned, of course. He has—I don't say he was the moving factor because if you ever saw a bunch of individualists, that's eight individualists. He supported it along with the others. I can't say that he was the moving factor because I don't think any one of the eight can lead any one of the other seven.

Q. Judge, would you say that the period of time from November 1, 1961 through October 31, 1962, would be a [fol. 725] fairly representative year in the operation of your Court?

A. My Court?

Q. Yes, sir.

A. No, sir. I will say from October 8, 1956 until January —what is this—January 23, 1963, was a fair representation of the operation of industry of me and my Court.

Q. Can you tell us anything that would indicate that November 1, 1961 through October 31, 1962 would not be a fairly representative year in the operation of your Court?

A. No, I can't tell you specifically. I don't have the whole minute book on my fingertips. I can tell you I was always ready, willing and available, morning, noon and night.

Q. Judge, it is fair to state, is it not, that prior to August, that you never turned down any motions for the investigation of vice?

A. I believe that's correct. I don't think that I ever, to this day, turned down one except a couple that have arisen recently that I questioned. Prior to August, so far as a motion presented to me personally, I did not refuse to sign it.

Q. There were a number of motions which you signed prior to August of 1962?

A. Right, sir; how many exactly, I don't know. The [fol. 726] record will disclose that, of course, but there were a number, yes.

Q. And the District Attorney's office actually had no substantial difficulty in getting you to sign those motions, did they?

A. No.

Q. And as far as you know, prior to that time no Judge gave the District Attorney's office any difficulty in making authorizations of that nature, insofar as you know?

A. As far as I know, yes, until the miniature en banc meeting between the three Judges at that time.

Q. Insofar as the operation of your Court was concerned, Mr. Garrison had no reason to believe that the authorizations were not going to continue as he continued his investigation of vice, did he?

A. Well, except this: That he never confronted me or any of his Assistants never confronted me with any statements or bills for expenditures to be paid from the fund of fines, fees and forfeitures.

Q. Have you finished?

A. Yes.

Q. I just wanted to ask you if these were some of the motions which you signed. Would you look at this motion and tell us?

A. Yes, sir, I will. You are showing me a motion.

[fol. 727] Q. For bond investigation, is it not?

A. For the purpose of the record, you have shown me a motion—a partial motion of Denis Barry, II, Senior Assistant District Attorney, Parish of Orleans,

> "On suggestion to the Court that it is now necessary to reimburse Max Gonzales, who in the course of investigation for the District Attorney's office, used the sum of $269.00 as marked money," etc.
>
> It Is Ordered that Denis Barry, Senior Assistant District Attorney, did make payment to Max Gonzales the sum of $269.00."

It's dated June 19, 1962. Now, the signature on here is not my signature. I can't deny that I wrote it. If you show me the original with my signature, I can answer you factually.

The Court: Judge, that same question has come up in prior testimony and you will not have to answer the question unless the document itself is shown to you.

Q. Is it not certified as a true copy?

A. It's certified a true copy by Pat Champagne, Acting Minute Clerk of Section "H". I say I can't remember it. It's not my signature. It's very likely that I signed it but I don't know if I signed it or not. But at that time I didn't refuse to—I had not refused to sign any expenditures and to the best of my recollection, I signed one to reimburse [fol. 728] Max Gonzales for going to Parish Prison and doing some work.

Q. Here is one that does have your signature.

A. That's my signature, yes, sir, June 9, 1962.

Q. And what is it for?

A. $120.00 for special investigative work in case pending in Criminal Court, and attached to it is a very revealing item.

Q. Is that one you previously discussed?

A. Yes, but it's itemized, where the money was spent. It's itemized and I signed it.

Q. So there isn't any question about it that so far as the District Attorney knew, the Judges would approve his expenditures for undercover investigations at that time?

A. Well, I signed it June 8. Of course, the statute would require it be submitted in advance but I signed it, yes.

Mr. Organ: That's all the questions I have.

Mr. Gremillion: We have no further questions of Judge Bagert at this time. I want to ask the Court to instruct the witness to please remain under the Rule because we may have to use this witness for rebuttal.

The Court: In other words, you are under the Rule and remain excluded from the courtroom. Now, this is off the record.

[fol. 729] (Discussion off the record)

By Mr. Organ:

Q. Let me ask you, who passed the Home Rule Charter?
A. Pardon?
Q. What body passed the Home Rule Charter?
A. The State Legislature.
Q. What body passed the statute under the Home Rule Charter?
A. By constitutional amendment.
Q. What body passed the fines and fees statute?
A. Legislature of the State of Louisiana.
Q. When did the fines and fees statute—when was that passed?
A. I understand it came in existence in 1959 and was amended in 1960 and the Home Rule Charter, I don't know the exact date.
Q. Around 1946?
A. No, subsequent to that. That's when Jimmie Davis was first Governor. That came at a later political controversy.
Q. It was before 1959 though, wasn't it?
A. Oh, yes.

Mr. Organ: No further questions.

(Witness excused)

[fol. 730] Judge George P. Platt, called as a witness by the State of Louisiana, after being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Gremillion:

Q. What is your name?
A. George P. Platt.
Q. What is your occupation, sir?
A. Judge of Section "B" Criminal District Court.
Q. Where do you live?
A. 223 Verret Street, in Algiers—in that section of the City of New Orleans.

Q. Is that across the river, Judge?

A. Yes, sir.

Q. How long have you been a lawyer?

A. Since 1913.

Q. When did you graduate and where?

A. I graduated from Tulane University, Doctor of Law.

Q. What year was that?

A. 1913.

Q. How old are you, Judge?

A. I will be seventy on the 15th of June.

Q. Judge, how long have you been Judge of Division "B" of the Criminal District Court?

[fol. 731] A. I took office in January, 1936.

Q. Have you been elected subsequently since 1936 to Division "B"?

A. Yes, sir.

Q. Incidentally, who was your opponent in 1960?

A. Mr. Garrison.

Q. Do you hold any malice or animosity against Mr. Garrison for having run against you, unsuccessfully, in 1960?

A. None whatever.

Q. Or for any other reason?

A. None whatever.

Q. Judge, did you hold any public office prior to becoming Judge of Division "B"?

A. I was elected to the Legislature from the Fifteenth Ward, Algiers, in 1918. In 1920, I ran for and was elected Judge of the Second City Court. I was reelected in 1924, reelected in 1928, reelected in '32. Then I ran for this office and was elected in '36.

Q. In other words, you have been serving as a Judge in some type of capacity since 1924?

A. Yes, sir—1920, sir.

Q. 1920?

A. Yes, sir.

Q. You are married, Judge?

[fol. 732] A. Yes, sir. I have two children, both married and I have two grandchildren from each of them.

Q. Do they reside in the City of New Orleans?

A. Yes, sir.

Q. Judge, have you read the statement Mr. Garrison made about the Criminal District Court Judges on November 2, 1962 that was published in the States-Item?

A. I certainly have.

Q. Judge, is that statement true or false?

A. It's absolutely false.

Q. Judge, have you been motivated or influenced in any of your work as Judge by racketeers or racketeering influences?

A. I never heard it said before.

Q. Well, have you?

A. No, positively not.

Q. In any of this controversy on the approval of expenditures from the fines and fees fund by the District Attorney, have you been motivated or influenced by racketeers of any type or sort?

A. Positively not and absolutely not.

Q. Judge, have you sent any message to the District Attorney on how to operate his office in any respect?

A. Never.

Q. Judge, the system of having—incidentally, how many [fol. 733] jury days—what are your jury days?

A. Tuesday, Wednesday and Thursday.

Q. And how many months during the year do you conduct jury days?

A. Well, in 1962 I had six panels. That's six months I had jury panels.

Q. In other words, you had jury trials for six months?

A. I had the jury there to try jury cases if they were used. I had six months in '62, six months in '61, seven months in '59 and seven months in '58. That's as far back as I go.

Q. Judge, has the system of assigning cases—felony cases and misdemeanors—has that remained consistent since you have been a Judge of Division "B"? Who assigns all those cases?

A. Well, the cases are allotted to each division by the Clerk of Court.

Q. Who assigns them for trial? Who brings them up for trial?

A. The District Attorney completely handles the docket.

Q. Now, has the system employed for trial of jury cases and misdemeanors since Mr. Garrison has been District Attorney, has that been the same since you have been Judge [fol. 734] since 1936?

A. There has been no change but we haven't used the Jury.

Q. Have you had any complaints concerning the conducting of your docket from Mr. Garrison since he has been in office?

A. Not until I heard about this trouble.

Q. Have you had any complaints from the Assistant District Attorney in your division?

A. Since Mr. Garrison has been District Attorney, I haven't had an Assistant District Attorney long enough to really get to know him.

Q. What do you mean by that?

A. Well, I mean that Mr. Garrison took over in May and at that time, Mr. Coleman, a young man, was appointed to my division and he had had no experience in the practice of law. He had been a reporter up until the time he was appointed but he was a lawyer but he had no experience. I had a jury panel in May but no jury cases were fixed. I imagine the young man didn't think he was qualified yet to take over an entire trial and in June Mr. Coleman was removed and Mr. Dalton Williams was sent in to the Court, and Mr. Williams was there when the Court went on vacation or when our section went on June 15. We came back in September. In September, Mr. Coleman came back into [fol. 735] my division of the Court. I didn't have a jury in September because I knew that the prison would be full of new cases which would have required arraignments and things of that kind before they could be set for trial. Mr. Coleman was in my section until October. I don't believe Mr. Coleman was qualified to try jury cases. He was a high-class young gentleman, and he was anxious to work and in September he disposed of sixty-three cases and collected several hundred dollars in fines. In October I took a jury panel again but again we didn't try any jury cases but between Mr. Coleman and myself, we disposed of 112 cases and in November, Mr. Coleman was taken out. I got a jury panel again in November and Mr. Alvin Oser was

sent into my Court in November. Again I had a jury but we didn't try no jury cases.

Q. Why didn't you?

A. Just because they weren't ready for trial. They weren't able to be tried. Between the District Attorney and the defense Counsel, cases would be continued, to be refixed. At no time did I interfere and say I wouldn't try a case.

Q. Judge, since this statement has been made—the statement of November 2 by Mr. Garrison concerning the Judges—have you personally been exposed to injury, contempt and ridicule?

A. Well, of course. I had several anonymous calls over [fol. 736] the telephone that were very embarrassing. At this stage of life, after living my life the way I have, I was hurt to think that this had to happen now.

Q. Has that been on more than one occasion?

A. Oh, yes, sir. I guess I had half a dozen anonymous phone calls, a couple of post cards and even a letter from a lady who signed her name and bawled the devil out of me for not giving Mr. Garrison his money and let him go on with his investigation of crime.

Q. Now, Judge, when you joined with the other Judges for requiring five Judges to approve expenditures from fines and fees, what was your reason for doing that? I am talking about you personally there.

A. All of this went on while I was out of town on my vacation. I don't know of my personal knowledge what the system was or what the situation was but when I came back in September, I learned that there was an agreement among the Judges that no warrants were going to be signed until all the Judges got back in October, at which time we would hold a meeting en banc and discuss it. Well, that went on, then when October 4 came along, I was advised to call a meeting en banc—being the Senior Judge—and I called it. That was in the morning of October 4, I believe, and we then discussed what the situation was and that's the time I learned what the trouble had been. Of course, I don't [fol. 737] know that of my own knowledge. I heard Judge Wimberly say what happened and heard Judge O'Hara say

what happened but I was out of town. I was not present when it happened.

Q. Judge, since this decision of the Judges to require five to approve—three in an emergency case—have you joined with the other Judges in ranking items of expense for the District Attorney?

A. Oh, yes.

Q. Did you or have you in any way attempted to block or obstruct the District Attorney in his efforts to suppress vice in the City of New Orleans?

A. No, sir. I have handled practically all the warrants that have been approved because the District Attorney sent the warrants to me as Senior Judge and I called the regular Judges together and we signed them if we approved them.

Q. Well, Judge, as to those that have not been approved, what was your reason for not approving them?

A. Well, to my recollection, we refused to sign warrants for undercover work, overtime work, warrants and the investigation, and there is one that we refused to sign because there was bids and it was over $1,000.00. That's the reason. We believe legally that that fund cannot be used for that purpose.

Q. Does the District Attorney have available other means [fol. 738] to make investigations?

A. Well, of course, he has an allotment from the City of New Orleans to run his office but I don't know whether he could use that for investigations or not.

Q. I think you misunderstood my question. Does the District Attorney have other means, other than these funds from you all—from the Judges—to investigate vice? Does he have other personnel assigned?

A. Now that I know of.

Q. Do you know whether he has got city police assigned to his office?

Mr. Organ: I object to that. He is obviously leading the witness now. The witness gave a negative answer and now he is trying to lead him into the answer he wants.

The Court: You might rephrase your question.

Mr. Gremillion: I don't mind. I don't think he understood what I meant. Maybe I was going too fast. I will rephrase it.

Q. Do you know of any personnel available to the District Attorney's office?

A. I know that he has got, I believe nine or twelve police there and I do believe that he could get all he needs.

Q. Where would that come from?

A. From the Police Department.

[fol. 739] Q. Is that the City of New Orleans?

A. City of New Orleans.

Q. Is that available to him now?

A. I am certain it is. I never heard that it wasn't.

Mr. Gremillion: We tender the witness.

Cross examination.

By Mr. Organ:

Q. Did you just say, Judge, that he had nine or twelve police on his staff or was that for purposes of investigation?

A. Well, I said that he has them there. Now, they do police work, I imagine. I have never been a District Attorney nor an Assistant District Attorney so I really don't know the workings of the District Attorney's office.

Q. You believe that it is perfectly legal for the District Attorney to make investigations, don't you?

A. If he uses police, definitely.

Q. If he uses these men in his office?

A. Those are policemen assigned to his office and I think he is entitled to do any kind of police work.

Q. Now, actually, there has been no motions presented to any of the Judges, as far as you know, to get salary money for any investigators, has there? That's only for the money that was used during the investigation?

[fol. 740] A. Well, of course, we have handled a lot of motions. I know that some of them ask for a hundred, some ask for four hundred, this one and that one.

Q. But it was not for salaries, was it?

A. These were not for salaries. I think it was some for jobs but there was some for salaries that we turned down.

Q. For salaries of whom?

A. I believe it was for overtime for the police or something.

Q. You turned that down?

A. Sir?

Q. You turned that down?

A. Yes, we turned it down.

Q. Why did you turn that down?

A. Well, because we didn't believe that the police were entitled to overtime out of fines and fees.

Q. Judge, do you have a legal opinion as to the legality of the five out of eight rule?

Mr. Gremillion: I object to the way the question is phrased. By legal opinion—are you finished?

Mr. Organ: Yes, I am finished. I am waiting for an answer.

A. I know generally what the law requires.

Q. What does the law require?

[fol. 741] A. It says it shall be submitted for approval to the Judges of the Criminal District Court.

Q. To a Judge?

A. To a Judge.

Q. Now, is it not your opinion that the requirement that it be submitted to five Judges is illegal?

A. Well, I believe that it is not covered by the law but the Judges felt it had to be covered for their protection. That's something else going on that to me was hearsay. I didn't know anything about that.

Q. When you say it's not covered by the law, is it not your opinion that it is an illegal requirement on that statute?

A. Well, no, I won't go that far. If what the other Judges stated is true, then I think the Judges need some protection.

Q. Now, has there been any criticism that you know of, from any source, against the Judges for signing and authorizing funds for investigation out of the fines and fees fund to the District Attorney's office? Have you been criticized for allowing investigations?

A. Not that I know of.

Q. You know of no case where anyone criticized any Judge for authorizing the use of this fund for investigative purposes?

[fol. 742] A. No, unless you are talking about the Judges themselves.

Q. Then only the Judges themselves complained; no one else complained about the use of this fund for investigative purposes, is that correct?

A. No one that I know. No one complained to me.

Q. So then how is it, Judge, that you felt that you needed protection, since no one had ever raised the issue except someone within the eight Judges?.

A. For the same reason that was told to me, that Mr. Garrison would use one Judge against another Judge, by going to one Judge and if that Judge refused it, he'd go to another Judge, without explanation that the first Judge had refused him.

Q. But you have no personal knowledge that he ever did anything like that, do you?

A. No, sir, nothing but what I was told.

Q. And that was only on one occasion which was explained as a misunderstanding?

A. That was the occasion where Mr. Garrison was supposed to have said Judge O'Hara was going to sign it and then went out of town and Judge Wimberly signed it.

Q. But there was no outsider at any time ever criticized any Judge for authorizing the payment of funds out of [fol. 743] fines and fees for investigative purposes?

A. Not to me.

Q. And as far as you to, to any other Judge?

A. I have no knowledge of it.

Q. Now, Judge, do you remember the en banc meeting held October 4, 1962, that Mr. Garrison attended?

A. Yes, sir. I believe that is the time I remember.

Q. You wrote Mr. Garrison a letter inviting him to that meeting, did you not?

A. Yes, sir.

Q. And what was the purpose of his attending the meeting?.

A. Well; it was to advise him what the Judges had done at the meeting in the morning. I believe we had a meeting in the morning and all of this was settled as to how we were going to proceed and Mr. Garrison was then

invited down and we explained what the situation was from then on.

Q. Isn't it a fact, Judge, that you wrote Mr. Garrison a letter telling him that there was going to be a meeting at one-thirty on that day and inviting him to attend and discuss the manner of handling the fines and fees fund?

A. Well, I wrote him a couple of letters. I may have written him that letter. I know we invited him.

[fol. 744] Q. And isn't it also a fact that that morning the Judges, without Mr. Garrison's presence, held a meeting and made the decision which they did and then informed Mr. Garrison of it when he arrived at the meeting at one-thirty that afternoon.

A. I believe that was the procedure.

Q. So Mr. Garrison did not get to take any part whatever in that meeting before the decision was made?

A. Well, I wouldn't want to swear to it. I don't recollect it that well but I do believe we met and framed the procedure and then sent for Mr. Garrison and explained the procedure to him. I believe that's the way it was.

Q. Judge, getting back to your trial of cases, how long has it been since you tried a jury case in your Court?

A. The last time I tried a jury case was in April—April 18, 1962, a month before Mr. Garrison became District Attorney.

Q. And how long has it been since you tried a misdemeanor case?

A. Oh, we can try misdemeanors without thinking about it, if they don't plead.

Q. When was the last time that you remember one?

A. I don't know. I never looked up any records on my misdemeanors.

[fol. 745] Q. Did you ever ask Mr. Garrison or his Assistant to set cases in your section?

A. That's his job. I don't have to ask him to set cases.

Q. Then you say they never set cases in your section?

A. I said jury cases.

Q. Jury cases. They never set jury cases in your section?

A. They may have set a few of them but they were never tried, not through no fault of mine. I am there and the jury is there.

Q. Isn't it a fact, Judge, that over the period of years, that every time the District Attorney sets cases in your Court that you grant continuances to the defendants without any difficultly whatever?

A. You could count on your fingers of one hand where I continued a case against the wishes of a District Attorney, at any time—before Mr. Garrison got there or after he got there.

Q. Did you try a lot of jury cases before Mr. Garrison got there?

A. No, I didn't try a lot but I tried them.

Q. How many jury cases did you try a year—the year of 1961, say?

[fol. 746] A. Oh, three or four.

Q. For the whole year?

A. Yes. I tried two in '62. I tried three or four in '61.

Q. Now, did the previous administration set cases in your Court?

A. Oh, yes. They fixed—they continued them or they took pleas.

Q. Now, Judge, if I had a record that indicated that from November 1, 1961 to October 31, 1962, you tried only three cases, both misdemeanor or jury, would you say that my record was incorrect?

A. I wouldn't say it was incorrect, no, sir.

Q. And if during that same period it shows that you had granted 139 continuances for the defendants, would you say that that was incorrect?

A. Well, it seems to me it would be incorrect but if I granted it, naturally, I had to grant it but I granted it on the consent of the District Attorney. The District Attorney didn't raise any objection; he agreed because any time a lawyer comes to me and says, "Judge, I want a continuance in this matter today," for some reason or other, I say, "See the District Attorney and find out what his opinion is."

Q. Now, Judge, do you work on Friday?

[fol. 747] A. I am in the Court on Friday but they don't fix any docket in my Court on Friday.

Q. Do they fix any docket any other day?

A. What is that?

Q. Do they fix any docket any other day?

A. Oh, yes, docket fixed usually every day. I had four burglaries yesterday, the whole four of them pleaded and are on their way to the penitentiary.

Q. Four of them pleaded?

A. Four.

Q. How about the day before, Monday?

A. No.

Q. No cases fixed?

A. No cases fixed on Monday.

Q. How about last week?

A. Oh, last week but not this week. This week was the trial in this case starting.

Q. Did you try any cases last week?

A. I disposed of cases, sir. I don't know whether I tried them or not. I try them all, if they plead or not. I want to know what the facts are before I impose sentence but for your information—I just made a rough sketch from the minutes—in 1962, I disposed of a total of 461 cases and collected $5,180.00 in fines.

Q. Is it not a fact that you had a man named Green [fol. 748] who waited three years in Parish Prison for trial in your section?

Mr. Gremillion: I think that's totally unfair. The District Attorney controls the docket. This Judge has nothing to do with whether a man remains in prison or not. There could be many, many reasons for that. The lawyer could be waiting to collect his fee.

The Court: I think at this time we will have to cut down on some of this. The District Attorney is the sole judge of how, whom and when he shall prosecute, under the Code. If you can prove that this was brought about by reason of the fact that it was brought before him and he refused to act or didn't act, I think then he is bound. Of course, a Judge has no way of knowing who is in prison or how long they have been there.

Mr. Organ: The point is, we haven't had an opportunity to put our evidence on to refute what the Judge has said. Now, he is [illegible] cross-examination and if he knows—

The Court: Suppose you cross-examine him in a manner in which—you can't just take a pot shot at him on some-

body that might have been in prison without his knowledge and without him having taken any active action in the matter. You might rephrase your question so it will lay a foundation for the facts—has he knowledge that a man was [fol. 749] in prison and that he was kept there without a trial.

Q. Do you have any knowledge of a man who was in Parish Prison—a man named Green who was in prison three years?

Mr. Gremillion: That's grossly irrevelant, whether a man was in Parish Prison three years—that's not this man's forte.

The Court: Ask him if he has knowledge.

Q. Do you have any knowledge of a man named Green who remained three years in Parish Prison while he was charged in your Court and was waiting to be tried on that charge?

A. As far as I know, this is the first time I have heard of it.

Q. Now, Judge, do you consider a lottery operation a racket?

A. Well, no question about it, lotteries are a racket. I'd put them as a racket.

Q. You consider that a racket?

A. Yes.

Q. Now, have you ever had any close connections with people in the lottery business?

A. No.

Q. Do you know who Mrs. G. W. Platt is?

A. My mother.

[fol. 750] Q. Did she ever have any lottery business?

A. Never; not to my knowledge.

Q. Not to your knowledge?

A. No, sir.

Q. Well, I will hand you what purports to be a bill of sale—photostatic copy of bill of sale from Mrs. G. W. Platt and ask if you deny the fact that that is her signature which appears thereon?

A. I don't know whether I can identify her signature. I haven't seen her signature in fifty years.

Mr. Gremillion: I am going to object to the introduction of any such document like that photostatic copy.

The Court: He hasn't offered it. Let him question on it.

Mr. Gremillion: I want to make my objection now, unless he brings the original in.

A. It could be her signature. It could be my mother's signature, from what I know of it.

Q. This purports to sell the Original Claiborne Lottery, domiciled at 645 North Dorgenois Street to a man named Eugene J. Philastre, dated March 16, 1946, Algiers, Louisiana. Do you have any knowledge whatever of such a transaction?

A. No.

Q. Do you have any knowledge that your mother owned [fol. 751] such a lottery?

A. Positively not. My father was in the lottery business before he died.

Q. Your father was?

A. Yes, but he died in 1938.

Q. Is it possible that your mother was?

A. Was what?

Q. In the lottery business?

A. Positively not. My mother died at the age of eighty-one years and she died in 1954.

Q. But your father was in the lottery business?

A. Yes. I didn't know that except by hearsay. I was married and I wasn't living with them. I was married in 1917 and raising my own family in my home.

Mr. Organ: In connection with the testimony of the witness, we offer and introduce as "D-20" the document which has been the subject of this interrogation.

(Thereupon, the document described was marked "D-20" for identification and filed in evidence.)

Mr. Organ: Thank you, Judge. I have no further questions.

Redirect examination,

By Mr. Gremillion:

Q. Judge, when did you learn of the fact that this docu-
[fol. 752] ment dated April 16, 1946 was executed? When did you first learn of this?

A. When Mr. Kohn threatened to make it public if I continued to try cases.

Q. What Kohn is that?

A. Of the Crime Commission.

Q. Is that Aaron Kohn?

A. Yes, sir.

Q. You first learned about it in 1958 when Mr. Kohn wrote you a letter?

A. Yes, sir.

Q. Threatening to make it public?

A. Threatening to make it public if I continued to try this case. There was some thirty-five policemen charged with grafting.

Q. Did you continue to try the case?

A. I continued to try the case. He gave me until ten o'clock the next morning when I started trial of the case.

Mr. Organ: I am going to object to that. This is hearsay, out of the presence of the Defendant—out of the hearing of Mr. Garrison, what Mr. Kohn did.

The Court: You have vouched for the document. I think he has a right to explain when it first came to his attention.
[fol. 753] Mr. Organ: We are not trying to object to that. We are objecting to what Mr. Aaron Kohn told him about it.

The Court: You can't go into what Mr. Kohn told him. That was strictly hearsay.

Mr. Gremillion: I certainly can introduce his letter to show that he first got it in 1958 and he gave him until ten o'clock in the morning for his decision and didn't intimidate this Judge because that is the inference—he is trying to show that this man has got a bad reputation.

The Court: I believe that the witness has already said that that was done and I believe the witness has already said that he continued to try the case.

Mr. Organ: We don't object to the introduction of that letter, if he wants to introduce it. May I see it?

Mr. Gremillion: I didn't say I was going to introduce it. I am just asking him questions about it.

Mr. Organ: You don't mind my seeing it?

Mr. Gremillion: Help yourself.

Mr. Organ: We have no objection to the letter.

Q. Judge, as I understand your testimony, you first learned of this on October 3, 1958, when Mr. Aaron Kohn told you what he did?

A. Yes, that's right.

Q. Did you succumb to that intimidation?

A. No, sir.

[fol. 754] Mr. Organ: I am going to object. There has been no intimidation shown whatsoever and the letter which the Attorney General has does not show any intimidation.

The Court: You might rephrase your question. You can show whether or not he continued with the investigation.

Q. Did you continue with the trial of these people?

A. Yes, sir.

Q. Were you influenced in your decision in any way by this document being called to your attention?

A. None whatever.

Q. Have you ever been influenced in any way in your activities as a Judge as a result of that letter after it was called to your attention?

A. I decide every case that I handle on its merits.

Q. And according to the law?

A. And according to the law. Of course, that's its merits.

Mr. Gremillion: I have no further questions.

Recross examination.

By Mr. Organ:

Q. Judge, your testimony is that you did not know about this document before 1958?

[fol. 755] A. Before Mr. Kohn jumped on me.

Q. But you knew that your father had been in the lottery business before that?

A. Yes. I didn't know that he was out or in. He died after fifteen weeks and I didn't know anything about the business—whether he was still in. He was fifteen weeks in the hospital when he died; operated on him two or three times before he died.

Q. This case that you say Mr. Kohn contacted you about, was one of the defendants in that case a man named Rip Roberts?

A. I don't know anything about it. My mother died in '58 and when this report was pulled on me—my mother died in '54, February of '54—and when this thing was pulled on me, there was no way of me finding out anything about it.

Q. Well, Judge, my question is this: The case that was pending before you that you refuse to recuse yourself from, was Rip Roberts one of the defendants?

A. I wouldn't know. No, I think they were all police. I believe there was thirty or thirty-five defendants.

Q. Wasn't that where twenty-nine lottery operators were charged with attempting to bribe the police?

A. I don't want to say yes or no on that. I don't recollect.

[fol. 756] Q. You don't recall what the case was about?

A. The only thing I remember about that case is getting the letter from Mr. Kohn, threatening to make it public if I didn't notify him by ten o'clock that I wouldn't go through with trying the case. That was in the evening paper.

Q. Judge, was it not twenty-nine defendants indicted for attempting to commit public bribery in case 159-238, pending in your Court and were not those defendants lottery operators, including Rip Roberts?

A. I don't know anything about it.

Q. And how did you decide that case?

A. All were tried. I believe I held a plea of prescription was good.

Q. You dismissed the suit; dismissed the charges, didn't you?

A. Plea of prescription.

Mr. Organ: If your Honor please, we would like to request an instanter subpoena for the record in this case,

No. 159-238, to have available before the Court and possibly introduce in evidence.

The Court: Let it be issued.

Mr. Organ: That's all the questions I have.

The Court: Are you through with him?

Mr. Gremillion: We are through with Judge Platt.

[fol. 757] The Court: We will recess for fifteen minutes.

(Thereupon, a recess was taken)

After Recess:

Mr. Organ: If your Honor please, we have a return on the instanter subpoena which was issued a moment ago and we now have that record and I would like to read the names of the defendants and the charge into the record.

Mr. Jackson: The State has no objection to the introduction.

Judge George P. Platt, resumed the stand and testified further as follows:

Mr. Organ: If your Honor please, rather than introduce the entire record, we would prefer just to read the names of the defendants and the charge, rather than cluttering up this record. If you want it all in, we will put it all in.

Mr. Gremillion: Suit yourself.

Mr. Organ: With that agreement of the Attorney General—

Mr. Gremillion: I haven't agreed to anything. I am just not objecting.

Mr. Organ: With the Court's permission, I will read the names of the Defendants into the record, as well as the charge for which they were charged. The defendants were —this is Case 159-238 of the Criminal District Court for [fol. 758] the Parish of Orleans. The defendants were Louis Agneris, Frank Schnell, Lionel Barthelmy, May S. Sanders, August J. Mills, Casimer Mullen, Harold F. Mills, Mike Callia, Ripley C. Roberts, Lucius Forsythe, Arthur G. Mills, August J. Mills, Sr., Edwin H. Sbisa, George L. Hoffman, Frank Italiano, Aaron Harris, William J. Healy, Matteo J. Asconza, Jeff Albert, Edward Herman, Harry

Daniels, Milton Durel, Joseph L. Scheuring, Pat Comiskey, George Pecaroro and Edwin Fauria and the charge: "Did wilfully and unlawfully conspire to commit the crime of public bribery, contrary to the form of the statute of the State of Louisiana and in such cases made and provided and against the peace and dignity of the same."

Mr. Gremillion: I object to the introduction of the names that he has mentioned and also the introduction of this particular record because the only thing that's admissible is a conviction. The defendants in this case were discharged and a plea of prescription was maintained. The State appealed this case to the Supreme Court of Louisiana in *State of Louisiana vs. Bagneris*, 44-403 of the Supreme Court of Louisiana and the Supreme Court affirmed Judge Platt's decision, discharged the defendants and they were not convicted of anything.

Mr. Organ: If the Court please, we are not trying to be controversial. We are trying to show, in response to [fol. 759] Judge Platt's testimony, when he didn't know what the charge was or who the defendants were and this is just to clear that up.

Mr. Gremillion: If the Court please, that testimony is damaging as to this Judge because it imputes that he did something wrong when he did nothing wrong except follow the law.

The Court: Of course, Mr. Gremillion, I think you are correct in your objection but I would like to have before me the case that you are speaking about before I rule on it.

(Thereupon, Counsel presented the information requested to the Court).

The Court: I am going to state at this time that only the record of convictions is admissible evidence. The fact that a man has been charged with a crime does not necessarily mean that he is a criminal. In other words, it doesn't impute the fact to him that he is a criminal. That is the very purpose of the sanctity of prosecution—of his right to be tried and the fact that the Supreme Court held in this case that Judge Platt was correct in his decision and maintained, I believe, a plea of prescription, there is nothing whatever to be imputed or derived as a source of satisfaction to

anyone. The mere fact that they are tried—in the number of years I have been on the bench, I have tried numerous [fol. 760] people who had a criminal record but a man is not tried on his reputation solely or what somebody else might think of him. The only thing that the Court uses in determining the innocence or guilt of the accused is the evidence or want of evidence from the witness stand and the law as applied to the facts in the case. So I would hate for anyone to impute to me the fact that I might have turned loose—and I have turned loose people that in my own mind were guilty of criminal practices, but at the same time, if the State did not make out its charge or cannot produce the evidence or if there is such a lack of evidence as would not warrant a conviction, it is my duty and my responsibility to my oath and to the office which I hold that prompts me to do that which the law requires me to do and I would not want anyone to make any imputation as to any act of mine where the evidence or want of evidence was not justified in that application of the law. Therefore, since it's already gone into the record by the reading of this article, I want to say that as far as this Court is concerned, that evidence will not amount to anything, as far as this Court is concerned and I don't think any other Court can consider it.

Mr. Organ: If the Court please, I'd like to state for clarification purposes, our offer is not to prove that these men charged in this indictment were guilty.

The Court: What would be the purpose?

[fol. 761] Mr. Organ: The purpose is that Judge Platt on the witness stand had a very vague memory about the defendants.

The Court: If you just introduced it for the purpose of refreshing his memory, I don't think there is any objection.

Mr. Gremillion: He didn't say he didn't know anything about it. He said he didn't remember it.

The Court: That's all right.

By Mr. Organ:

Q. Did that refresh your memory?

A. Yes. It refreshed my memory as to the occasion of that letter, yes, sir.

Mr. Organ: Thank you.

The Witness: While I am up here, I have had one great honor bestowed upon me since I have been a Judge. I brought it along because I'd like to present it to the Court to show what my real reputation is. On January 28, 1954, I was presented with this silver scroll by the New Orleans Bar Association. It states: "Presented to the Honorable George P. Platt in recognition of distinguished and loyal service on the bench, by the New Orleans Bar Association." This was after I had been on the bench for thirty-five years.

Mr. Gremillion: No further questions.

The Court: Is he released from the rule?

[fol. 762] Mr. Gremillion: Judge, you can stay in the Court if you wish.

(Witness excused)

Judge Thomas M. Brahney, Jr., called as a witness by the State of Louisiana, after being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Gremillion:

Q. What is your name, sir?

A. Thomas M. Brahney, Jr.

Q. What is your occupation?

A. I am Judge of Criminal District Court Division "D".

Q. Where were you born and when?

A. I was born in the City of New Orleans on February 16, 1911.

Q. Have you lived here all of your life?

A. All of my life.

Q. Are you married?

A. Yes, I am married to the former Winifred Yokum. I have three children, one who is attending Loyola, one who is attending Lady of the Lake College in San Antonio, another boy attending a local high school and I have two grandchildren.

Q. Judge, what does your formal education consist of [fol. 763] and where did you obtain it?

A. Well, I was educated here in the public schools. I received my grammar education here across the street at Samuel J. Peters. I was an honor student graduate from Jesuits High. I attended Loyola University where I received my LL.B. in 1942.

Q. When were you admitted to the Bar?

A. In the same year, in 1942.

Q. How long have you been Judge of that division?

A. As I recall, since April 28, 1958.

Q. Were you elected to that position?

A. I was elected.

Q. Have you held any other public office?

A. Yes. I served as a member of the Commission Council of the City of New Orleans from 1950 to 1954.

Q. Did you serve in the Armed Forces?

A. Yes, I served as a Lieutenant, Junior Grade, United States Navy, from February of '43 until November of 1945.

Q. Do you have an honorable discharge?

A. I do.

Q. Do you belong to any civic or fraternal organizations?

A. Yes, sir, I do. I am presently President of the Louisiana District Judges Association. I am a member of [fol. 764] the New Orleans Bar, the Louisiana Bar, the Criminal Courts Bar and American Bar Association. I am a member of the American Legion, the Veterans of Foreign Wars and Am-Vets, the Knights of Columbus, the Diamond Club, New Orleans Athletic Club and of the New Orleans Area Boy Scouts Council and I have been Director of the Milne Asylum for Destitute Boys for some six or eight years.

Q. Judge, have you read and are you familiar with the statement Mr. Garrison made about the Judges that was printed in the States-Item on November 2, 1962?

A. I am very familiar with it. I have read it on several occasions.

Q. Is it true, Judge? Is that statement true?

A. Not a word of it.

Q. Judge, have you been influenced by racketeers in any of your conduct on the bench?

A. I have not. Not only have I not been influenced by racketeers but I have not been influenced by anyone in any manner, shape or form.

Q. In approving the decision of the Judges to have five of them approve expenditures from the fines and fees and forfeitures account of the District Attorney, have you been influenced in your actions by any racketeers or promoters of vice?

A. No, sir. It was only after I returned from my vaca- [fol. 765] tion and found out what had occurred. I thought it was in the best interest and the proper handling of those funds to protect ourselves and keep the District Attorney from shopping around, that we do so adopt the rule.

Q. Are you sympathetic toward racketeers?

A. Absolutely not.

Q. Have you in any way attempted to block or obstruct the District Attorney in his efforts to suppress vice in New Orleans?

A. Not in any manner, shape or form.

Q. Do you have any animosity or malice toward Mr. Garrison?

A. To the contrary. Before Mr. Garrison was inducted, when he came into my office and told me he was going to give me a green assistant, I told him I would be happy to cooperate with him and I would be happy to try to help the young man because I had been helped when I started with Judge Christenberry, who was then United States Attorney, when I was an Assistant United States Attorney from 1946 to 1949 and at that time I offered to Mr. Garrison my help. I told him he had an opportunity to do a good job and at any time I could be of assistance to him, to call on me.

Q. Judge, do you know of any reason—can you assign any reason for Mr. Garrison making this statement about [fol. 766] the Judges on November 2, 1962?

A. I can't, because when we met on October 4, that was so contrary to his attitude at that time. There was some unpleasantness there between Mr. Garrison and someone else but Mr. Garrison at that time told us that he realized that he had made several mistakes but he was new in office

but that he was going to abide by the recommendations of the auditors whom he had hired and that he thought we could get together in this area of dispute as to whether the Judges had discretion or did not have discretion. He was going to concede that the Judges did have discretion and it wasn't purely a mandatory act. After we had that meeting, I met Mr. Garrison in the middle of October at the New Orleans Athletic Club and Mr. Garrison asked me how things were getting along and I told him all right and he said to me, "I hope things work out all right," and I said, "Jim, there is no reason it shouldn't but one thing that doesn't aid the situation is for assistants in your office to make statements that they intend to get the Judges on their knees."

Mr. Organ: If the Court please, I move that that last be stricken because whatever the assistants said, if there was any such, would have no effect on it—would have no effect on this case whatsoever.

The Court: Conversation with Mr. Garrison?

The Witness: Judge, it was with him personally, sir. [fol. 767] The Court: Mr. Garrison made that statement?

The Witness: Mr. Garrison made that statement and I made a statement to Mr. Garrison when we were having a conversation.

Mr. Organ: As I appreciate what the Judge has testified, he was having a conversation with Mr. Garrison about what had allegedly been said by an assistant of Mr. Garrison at some other time.

The Court: We'll take it off the record.

(Discussion off the record)

Mr. Organ: I withdraw my objection to that, if your Honor please.

Mr. Gremillion: Just repeat what you said for the record.

A. When Mr. Garrison was asking me about this situation and couldn't it be worked out, I assured him it could be worked out and I said to him, "It certainly doesn't help for your assistants to be making statements about making the Judges get on their knees," and he said, "I have heard about that and it's bad and I am going to stop it."

Q. Judge, as a result of that statement made by Mr. Garrison on November 2, have you personally been exposed to hatred, contempt and ridicule?

A. I have, on many occasions, not only myself personally but my family, my young son especially.

[fol. 768]

Mr. Organ: If the Court please, I move that the last portion of that statement be stricken, with respect to the family.

The Court: The question must come within the statutory provisions.

Mr. Gremillion: The Judge volunteered a little more than I asked him.

Q. Leave out the part about your family. Have you personally been subjected to hatred, contempt and ridicule?

A. Yes, I have.

Mr. Organ: At this time, I ask that our motion on this type of testimony previously made in our exception, be made general as to this testimony.

The Court: Unless you want to reserve a bill. Whenever any of the previous Judges testified, I believe you objected. Now you are asking me the question and I say it is your duty to reserve a formal bill.

Mr. Organ: I object to that question, on the ground that this witness would not be in a position to know, except in his own opinion, whether anything that occurred to him after this alleged statement of Mr. Garrison was actually due to the alleged statement of Mr. Garrison and, therefore, the evidence is irrelevant and immaterial and not per-

[fol. 769]

tinent to the case.

The Court: The Court is of the opinion that the evidence is admissible because there is no other way to show that he has been subjected to any hatred, contempt and ridicule and deprived him of the confidence or social intercourse, as stated in the statutory language, as stated in Revised Statutes Title 14, Section 47, within the intendment of that statute. He would be the only one who might or might not know. If he said that he knows that he has been subjected, I think he has a right to testify to that fact as to whether or not he has.

Mr. Organ: To which ruling we respectfully reserve a bill of exception and ask that there be included in the bill of exception the question, our objection, the Court's ruling, the answer, all of the testimony in the case and the entire record, including the bill of information, and that will be Bill of Exception No. 17.

The Court: At this time the Court will state that in its per curiam in answer to the bill of exception, it would have a right to elaborate upon the factual situation at the time of this ruling and the law in such cases governing and assign them as legal reasons for its ruling.

Q. Has this been on many occasions?

A. It has, socially and by letter.

Q. Has it been from more than one person?

[fol. 770] A. Numerous persons on numerous occasions.

Q. As a result of this, have you been hurt by this statement?

A. I definitely think that I have been hurt when I receive a letter telling me I am a crooked man.

Q. Was that after November 2?

A. It was.

Q. Judge, the system of assigning—incidentally, who makes assignments of cases in your division?

A. The District Attorney.

Q. Do you have a certain policy for the assignment of cases, that is, jury on so many days, misdemeanors on so many days and so forth?

A. No, I have left that to the discretion of the District Attorney. I would like to say that when I came out here in 1958, I took ill and I was ill for quite some time and when I started up in 1959, I had quite an accumulation so for the year 1959, I had nine jury months. I had two assistants assigned to me and I had jury cases, Monday, Tuesday, Wednesday, Thursday and on Friday we tried misdemeanor motions. I'd like to say that as a general rule, the District Attorney's office did not wish to set anything on a Friday.

Q. Whatever cases were assigned for trial, were you there to try them?

[fol. 771] A. I was.

Q. Now, has the system since you became Judge and since Mr. Garrison became District Attorney, has the system changed in any way?

A. Not to my knowledge. I have only been out here five years and only one year with Mr. Garrison.

Q. Maybe you don't understand my question. In other words, the system that was used before Mr. Garrison became District Attorney, is it the same system that he is using now?

A. That's right.

Q. There has been no change?

A. No change. I have never attempted to interfere with the District Attorney's office. I figure he is an elected official as I am and he has his duties and responsibilities the same as I have and I don't intend to run his office.

Q. Have you sent any messages to him, such as, "Don't rock the boat, son"?

A. Not one word.

Q. Have you sent any messages to him on what to investigate and what not to investigate?

A. Not one time.

Q. Have you sent any messages to him on how to run his office?

[fol. 772] A. Not in the slightest. I only tried to cooperate with him when he gave me a man with no experience.

Q. Is the same assistant still with you?

A. No. For some other reason he has changed and I have now Mr. Coleman.

Q. Is he experienced?

A. No.

Q. How long has he been out of law school, do you know?

A. I don't know that.

Q. Judge, have you approved for the District Attorney certain expenditures for investigation of vice prior to October of 1962, on his request?

A. That's right. In June, the District Attorney requested of me $300.00 to do undercover work for investigation of narcotics violations; $200.00 to do undercover work in the investigation of vice and prostitution and I also approved $250.00 to pay a man by the name of Max Gonzales for ser-

vices rendered in some undercover work, having to do with bonding operations.

Q. Judge, I believe that subsequently, at a meeting en banc, the Judges decided that five Judges would have to approve expenditures in the future. Now, what was your reason for that? Did you join that?

A. Yes, I did.

[fol. 773] Q. What was your reason for doing that? Could you explain that?

A. I can. I was on vacation when I read in the paper that the three Judges who were here had suggested that there be withholding or discontinuance of spending and I also recall reading that Mr. Garrison said he thought it was a good idea. When I came back, I was like all the rest of the Judges in there. I heard the story having to do with the incident involving Judge O'Hara and Judge Wimberly and after hearing that story and hearing Judge Wimberly and Mr. Garrison personally, head to head—

Q. Let me ask you one question right here. Were you present and heard the conversation between Judge Wimberly and Mr. Garrison?

A. I was.

Q. Go ahead.

A. In fact, Judge Wimberly said, if I may recall, because it was in the presence of Mr. Garrison, he said, "Jim, I want to ask you something without equivocation. Did you tell me unquestionably that Judge O'Hara said he would approve this thing, that there was no question in his mind whatsoever?" and he said yes. Then he said, "Well, that was my understanding." Judge Wimberly said, "But I did not ask you whether it was your understanding. You told me positively." That was the end of that conversation.

[fol. 774] Q. Now, go ahead with your answer before I interrupted you about your reason for joining the Judges en banc about needing to have five Judges to approve expenditures.

A. When it became apparent after that incident that the District Attorney was inadvertently or deliberately going around shopping and playing one Judge against the other—

Mr. Organ: If your Honor please, I object. That is conjecture and opinion on the part of this witness. He is here

to state facts. He has laid no facts whatever to indicate that the District Attorney was around shopping from one Judge to the other and I move that it be stricken.

Mr. Gremillion: If your Honor please, he knows out of his personal knowledge, as a result of a conversation between Judge Wimberly and Judge O'Hara, which he personally witnessed.

The Court: If Mr. Garrision was present and Judge Brahney was present at those times, anything that might have transpired would be admissible. What the Judge might have heard in reference to shopping, of course, would not be admissible.

The Witness: I was only offering my reason, your Honor, why I agreed to the five Judge procedure.

Q. Was that the reason, to prevent shopping?

[fol. 775] A. That's right.

Q. Go ahead.

A. Well, after that Mr. Garrison presented a list of motions, some eighty motions and because it was involving a lot of merchandise purchased from various merchants, we divided up—we tried as best we could to work it as expeditiously as we could. As I recall, and I don't know whether this has already been testified to, the only items, as far as Judge Haggerty and I were concerned, that we withheld approval on for payment was a bill of Hansell's, which said, "Balance, $1,100.00." All I asked Mr. Dalton Williams, who Mr. Garrison said would be his official representative and who would represent his law office, all I asked him was would he give us a bill so we could immediately approve it to give Hansell's its money. All of the Judges met when we had met with Mr. Dalton Williams, and it was somewhere in the neighborhood of the 20th or 24th or 25th of the month of October. It took a little time. There were several items, for instance—

[fol. 777] Mr. Organ: If the Court please, unless Mr. Garrison was at that meeting and heard what was said there, I object to any evidence—

The Court: I believe this witness has said that Mr. Williams was appointed by Mr. Garrison and Mr. Garrison

told him he would be his official representative. Is that right?

The Witness: That is right, sir.

The Court: If he has any authority to speak for Mr. Garrison in explaining the items at this meeting—

Mr. Organ: I don't believe that is true in a criminal matter. It may very well be true in a civil matter, and this is not civil.

The Court: Is it your contention, Mr. Organ, that if a person—I am talking about a particular item—if a person goes to another person—off the record.

(Discussion off the record.)

The Court: We will go back on the record. Now, Mr. Gremillion, you may make your statement. We are back on the record.

Mr. Gremillion: Well, to be brief, part of the Bill of Information and part of the statement made by Mr. Garrison on November 2nd is that he accused these Judges of cutting off and tying his purse strings, and this information goes to the essential portion of the allegation that the [fol. 778] statement, of course, is false.

The Court: Well, what—

Mr. Gremillion: It is not offered as to the truth and veracity—

The Court: Well, what is your purpose?

Mr. Gremillion: It is not for the purpose of the truth and veracity of Mr. Williams' statement, but it is for the purpose of showing that this Judge did not block his vice raids and so forth by the refusal to approve it.

The Court: Why don't you simply ask those questions? Don't try to bring in the conversation of some third party out of the presence of Mr. Garrison. Ask the Judge that, and he can make that statement.

Q. Well, Judge, forget about what Mr. Williams told you.

A. All right.

Q. What did you do? What was your reason for not approving it?

A. Well, all right. I will tell you that, Mr. Gremillion. The $1,100.00 for Hansell's was because we were not fur-

nished with any bills other than a balance statement. We did not authorize payment immediately for the purchase of four automobiles since we were not furnished with any bids or a jurat or any advertising. We did not authorize that payment immediately. Those were withheld. Now on [fol. 779] the question of the $500.00 and the $200.00, there was $500.00 for Mr. Williams, $200.00 for Mr. Charles Jacque, $100.00 for Chris Harness, $9.00 for Steve Plotkin, and $50.00 for Max Gonzales.

Q. And you approved those?

A. No, we didn't approve that because we were never given an accounting as to when and where and how they were spent, although we requested it on three occasions.

Q. Now, was there any other reason for your refusing to approve money for undercover work?

A. No. At this time I would like to say, and because it appears that I was one of those and I believe one other Judge approved work for undercover work.

Q. Now, let me ask you this question, Judge: You approved some motions for the District Attorney for undercover work in June, which you just testified to?

A. That is correct.

Q. Then later on when you met en banc to consider these other motions, you denied similar payments for undercover work?

A. Yes.

Q. Now why did you change your mind? What was your reason for changing your mind?

A. I would like to say at this time as far as I am concerned I felt that insofar as the District Attorney had, in [fol. 780] his opinion, done what he thought was right in spending these things, and he had already spent them, if he had accounted to us, I would have approved them, but I am convinced now, after going over the law and discussing it with my brother Judges, that I was in error in approving undercover work.

Q. Well, why do you say you were in error?

A. Well, because it has been pointed out to me—and I have got to admit that I don't know all the law—that under the law of 1946 and the Home Rule Charter, that the investigative work of vice and crime and other things are

properly under the Police Department, and there should not be two Police Departments, and I would like to go further and say this at this time, since all of this has arisen, that I feel in the face of the Home Rule Charter, which is a constitutional provision and I was a member of the Commission Council when it was passed, that when they amended this act and took the money from the General Fund of the City of New Orleans and put it in the District Attorney's Office, it was an unconstitutional act and it is in violation of the Home Rule Charter of the City of New Orleans. I hadn't considered it up to then.

Q. Judge, did you participate in a meeting on October 26th and approve some items for the District Attorney's Office?

[fol. 781] A. Yes. I wrote a letter to Mr. Garrison dated October 25th or the 26th, approving some 80 items, and in an effort to cooperate told them in that letter that it would be all right to incorporate it in one motion to expedite the payments.

Q. (Exhibiting document to witness) Is this a copy of the letter that you wrote to Mr. Garrison?

A. Yes, it is.

Q. And what is the total of these 80 items?

A. It was $10,276.32.

Mr. Gremillion: That is "State's Exhibit No. 8."

Q. Judge, have you all—when I say "you all," I mean the Judges meeting en banc—approved additional items since then?

A. Yes. I have attempted to compile a list of them to give you a little summary. From May 7 through September 10 various Judges have approved 73 motions totaling $19,284.56. On October 26th, which I have just testified, we approved 80 items totaling $10,276.32. Since that date and to the date that we had been signing motions, we approved 32 additional motions amounting to $17,742.35, which roughly amounts to $47,000.00. Now since then I know there have been some other motions. One was for $500.00 or something, or $600.00, to pay for meals and board for a witness in the Padlock case.

[fol. 782] Q. Did you all approve that?

A. Yes, we approved that. Now I also have found out from Judge Platt that he has several—

Mr. Organ: Excuse me, Judge. If the Court please, I have to object to what this witness found out from Judge Platt.

The Witness: I will clarify that, Mr. Organ.

Mr. Organ: —unless Mr. Garrison was there, in his presence.

A. (Continuing) I found out from Judge Platt, went over to his office and sought several motions that he had. I wasn't able to examine them carefully, and because of all this we haven't had an opportunity to sit down and examine them. There are presently some motions presented to the Judges. One is for $2,416.60 for services rendered by Warren J. Moity, Malcolm Dodge, and Theodore de la Houssaye, and the other motion is for $200.00 for Mr. Charles Jacque, which was one we had previously not approved because there was no accounting. I don't know whether there is an accounting at this time. And another is a motion for $526.33 for some investigations, but I have not had time to examine those.

Q. The Judges then haven't acted on those as yet?

A. No.

Mr. Gremillion: We tender the witness.

[fol. 783] Cross examination.

By Mr. Organ:

Q. Judge Brahney, the motions that are pending now for the action involving the five padlockings of French Quarter bars for Mr. Moity and Charles Jacque, now those motions are not for services rendered by those men but they are for expenses incurred by those men, are they not?

A. Well, I don't know. I just told you I haven't had an opportunity to examine them.

Q. As far as you know, it could be for expenses?

A. Could be for anything.

Q. —rather than salary?

A. That is right.

Q. Now, Judge, at any time in your presence in a meeting with Mr. Garrison up until the time that he made the statement that went into the paper of November 2nd, was the constitutionality of that statute ever drawn in question?

A. No. I told you that. I hadn't given it any thought, Mr. Organ, and I would like to say this at this time:

Q. Sure.

A. At all times, I wanted to cooperate with the District Attorney and the proof of it is, if you check the motions I approved, I never had any difficulty with him. When all of these issues arose and when my brother Judges called [fol. 784] to my attention—and after all, I am a human being, I don't know everything—called to my attention the illegality of this and I went back to check, I came to the conclusion and agreed with them that it was improper, but I am not apologizing for what I did. I am as subject to error as every other human being.

Q. We understand that, but the point I am trying to make is that, if the Judges doubted the constitutionality of this statute, that was not made known to him at any time prior to the time he made his statement which forms the basis of this case, was it?

A. No.

Q. In other words, he didn't know that they thought it was unconstitutional, as far as you know?

A. To my knowledge, I don't know if anybody has ever advised Mr. Garrison of anything, because he has never been in contact with us other than through the press.

Q. Well, you were in the en banc meeting, were you not?

A. That is right, but we didn't discuss that.

Q. Well, he was there?

A. That wasn't discussed. I would like to go back and reiterate that at that time Mr. Garrison said—and I'd like to show you now the tenor of the meeting—there was a little unpleasantness. After that was over, Mr. Garrison [fol. 785] said: "Look, I am new. I have made a lot of mistakes, but I want to correct them now. I have got my auditor, who has recommended procedures. I felt that you Judges had no discretion whatsoever, but you had to approve. I am willing to concede that you do have the dis-

cretion," and it was on that tenor that we went off, and then that is when he said that—he submitted all these lists and all the motions that had been approved and said that he was going to send Mr. Williams in to work things out. At that time, except for that one incident, we were on a rather cordial basis.

Q. And it is also true that no one said to Mr. Garrison, "Well, the Fines and Fees Statute is unconstitutional, in our opinion"?

A. As I told you, I don't know until this day that anybody has told him.

Q. Now you say there was some unpleasantness at that meeting and that was between Judge Cocke and Mr. Garrison?

A. That is right.

Q. Who first raised the question to you of the constitutionality of this statute?

A. No one. I was looking over the law. After all, when all of these issues arose, one day I went to look at the Act of 1960, which amended the 1959 Act, and in going back into the book I read the original act which the previous [fol. 786] District Attorney had changed, and I saw there the statement that all fines, fees, and forfeitures shall be made into the General Fund of the City of New Orleans, and I believe that I was the first one to express the opinion that this was unconstitutional.

Q. And that was long after this statement which forms the basis of this charge was made?

A. I don't know how long.

Q. Well, it was after the statement which forms the basis of the charge?

A. That is right.

Q. Now, you do know that the $250.00 for Max Gonzales was for undercover work, which resulted in the arrest and conviction of a man soliciting bonds in the Parish Prison, do you not?

A. Yes, I do have that information.

Q. Now is it fair to state, Judge Brahney, that it appeared at this meeting that Mr. Garrison had had a misunderstanding about whether or not Judge O'Hara had

approved the expenditure which was the subject of the controversy?

A. Well, you call it what you want. It wasn't my impression after hearing the story, and, if you want to hear the details, I will tell you.

Q. Well, in other words, you say it is not a fair state-
[fol. 787] ment to make that it appeared to be—

A. Well, that is a polite way to call it, a misunderstanding.

Q. Well, we don't want you to gloss over anything here, Judge.

A. No, I am not. You asked me was it a misunderstanding. I say I didn't get the impression, and I gathered from my brother Judges that they didn't get the impression, and I gathered from Judge Wimberly that he didn't feel that it was a misunderstanding.

Q. Did Mr. Garrison indicate that he had misunderstood certain factors about that which created the controversy?

A. That is true, what Mr. Garrison stated. Well, that was my understanding, but Judge Wimberly countered with, "You didn't tell me it was your understanding. You stated it to me as a fact."

Q. Now do you personally know of any single case where Mr. Garrison shopped around from one Judge to the other in order to get approval?

A. Other than what?

Q. Other than just this one alleged incident.

A. That is right.

Q. You know of none?

A. I know of none.

[fol. 788] Q. Now, Judge, you have entered into a political campaign since this whole thing has arisen, have you not?

A. That is right.

Q. So you apparently are confident that your public image was not injured to such a degree as to cause you to lose an election?

A. No, I wouldn't say that. That it was not damaged sufficiently to defeat me?

Q. Yes.

A. Yes, I would say that.

Q. You think it has damaged you sufficiently to defeat you?

A. No, sir, but I think it has damaged me, among my friends, no, but the people who don't know me, I would say it has damaged me, and I think that any man that gets up and charges a Judge sitting on the bench as being under the influence of racketeers and vice and crime does him damage. Would you think anything else, Mr. Organ?

Q. Well, of course, the way the situation is set up here, Judge my answer to any question wouldn't mean anything.

A. I realize that.

Q. And yours we hope would. The point I am making is that you must be confident enough that your public image was not damaged to the extent that you would lose the [fol. 789] election, or you would not have entered the campaign.

Mr. Gremillion: If Your Honor please, that is argumentative entirely.

The Court: Yes, that is purely hypothetical.

Mr. Organ: I think it goes to Judge Brahney's state of mind, whether he thought he was damaged to the point that he couldn't win the election.

The Court: He has answered that question already, Mr. Organ. He said he didn't think it had damaged him enough to defeat him but certainly among those who didn't know him that it had damaged him. He answered that question.

Q. Now let me ask you about the assignment of cases in your Court. Has the District Attorney's Office always assigned a reasonable number of cases for trial?

A. Oh, yes.

Q. Including in the Garrison administration?

A. Yes. I have never—you see, all this thing came up as quite a surprise. For instance, when I came back from vacation, I didn't know what the condition of the jail was because we Judges, since I have been out here, have depended on the District Attorney's Office to furnish us with a jail list to keep us advised of the condition of the jail, so when I got the letter from Mr. Hyatt about the condition, it came to me as a complete surprise. I didn't get it from the District Attorney's Office. However, the October

[fol. 790] docket was set up while I was on vacation, and just in passing I would like to say that out of 46 defendants that were set for trial in October, 30 of them were out on bond and only 16 of them were jail cases. I had no knowledge of that.

Q. But you have no complaint that the District Attorney's Office was not setting a sufficient number of cases?

A. Not at all. I don't think you will find that I have complained about the District Attorney's Office.

Q. Now, Judge, in all fairness you will concede that the Fines and Fees Statute should be adhered to until such time as it is judicially declared unconstitutional, will you not?

A. In what respect?

Q. In respect of its operation. It should continue to operate according to the statute until it is declared unconstitutional, if it is?

A. That is right. I would assume so, yes.

Q. Now the statute itself requires only the signature of one Judge on a motion, does it not?

A. That is what it says, yes.

Q. And it also refers to the use of funds within the District Attorney's discretion, does it not?

A. Well, that is where we get into an area of conflict.

[fol. 791] Q. But it does use the word "discretion"?

A. That is right. That is what we have Courts for, and that is what we have a Supreme Court for. If there was any disagreement between Mr. Garrison and the Judges, by the simple expedient of mandamus, we could have settled this whole thing.

Q. Now, can you testify as to any single incident where you were criticized by anyone, by anyone, for signing or authorizing monies out of the Fines and Fees Fund to be used for investigation by the District Attorney?

A. I criticized?

Q. Yes. Were you criticized?

A. No.

Q. Do you know of any other Judge that was criticized?

A. Not that I know of. I think my brother Judges criticized me for signing for undercover work.

Q. But, outside of your brother Judges, any outsiders of any nature whatever?

A. No, no. You see, up until this time, Mr. Organ, we had tried to keep the business of the Court and the District Attorney within the confines of the building.

Q. Now, when the District Attorney left the en banc meeting on that day, he gave the impression that he was going to do everything he could to cooperate with the Judges?

[fol. 792] A. That was my impression.

Q. And, as a matter of fact, Judge Brahney—

A. That is why I was so amazed to find myself on television.

Q. As a matter of fact, Judge Brahney, Mr. Garrison has never done anything, outside of the alleged statement, that you know of, that would show any personal animosity towards you?

A. No, but I am one of eight Judges, and he didn't exclude me, and when I had told the man, "Anytime I can help you, you can come to me," and when he stands up on television and tells, "Who could talk to those sacred cows," I don't know who he was talking about. He couldn't have been talking about anybody else but me. He didn't exclude me, Mr. Organ. I have to be included.

Mr. Organ: If the Court please, I am going to move that the reference to sacred cows be stricken from the record, because it is not part of the statement of November 2, 1962.

Mr. Gremillion: It is responsive, Your Honor.

The Court: I believe you elicited it. Read back his questions.

(Whereupon, the question and answer immediately foregoing were read back by the Reporter.)

[fol. 793] Q. In other words, your testimony is not that he said Judge Tom Brahney is a sacred cow, is it?

A. No, sir. He hadn't said any one individual.

Mr. Organ: All right. Thank you, Judge. I have no further questions.

Mr. Gremillion: Off the record.

The Court: Off the record.

(Discussion off the record.)

The Court: The Court will recess for ten minutes.

(Whereupon, a brief recess was taken.)

[fol. 794] After the Recess

JUDGE J. BERNARD COCKE, a witness called by and on behalf of the State of Louisiana, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Gremillion:

Q. Judge, what is your name?
A. J. Bernard Cocke, C-o-c-k-e.
Q. What is your occupation?
A. Lawyer.
Q. Do you hold a public office at this time?
A. I am. I do, rather.
Q. What office is that?
A. I am Judge of Section "E" of the Criminal District Court for the Parish of Orleans.
Q. When were you first elected to that judgeship?
A. I was elected in 1944.
Q. Have you been serving continuously since then?
A. I have been serving continuously since then, having been re-elected without opposition in 1952.
Q. Were you reelected recently; in 1962?
A. 1952. I have been eighteen years on the bench, consecutively.
Q. I see. Where did you graduate from law school, sir?
[fol. 795] A. From Loyola University of New Orleans in the Class of 1919.
Q. Have you held any other offices of public trust, Your Honor?
A. I was appointed by Governor Sam Jones as District Attorney of the Parish of Orleans in May of 1940. I was elected District Attorney of the Parish of Orleans in 1942

and served until 1944 when I was elected to succeed Arthur Charbonnet for an eight-year unexpired term.

Q. Have you held any positions of honor in the legal affairs of the State of Louisiana, such as the Law Institute and so forth?

A. I have been an appointee of the Supreme Court of Louisiana for a period of three years, appointed by the Supreme Court, on the Judicial Council. I have been also, and presently am, a member of the Law Advisory Committee for the Revision of the Code of Criminal Procedure for the last four years.

Q. Were you ever President of the District Judges' Association?

A. I was President of the District Judges' Association for the years 1946 and 1957, and I am presently sixty-four years of age.

Q. Have you any children, Judge?

[fol. 796] A. I have two children.

Q. Any grandchildren?

A. No, sir.

Q. Judge, are you familiar with the statement of the District Attorney, Mr. Garrison, made about the Judges of the Criminal District Court on November 2, 1962, which was published in the States-Item?

A. I am.

Q. Have you read that statement?

A. Repeatedly.

Q. Is it true?

A. No, emphatically no.

Q. Judge, have you either on the bench or in any activities as a judge been influenced at any time by racketeers?

A. I have not, emphatically no, known by the man who made the statement to be untrue.

Q. Judge, when this question came up about approving motions from the Fines and Forfeitures Account by the District Attorney, did your decision—your personal vote in this matter, was that influenced by any racketeers of any sort?

A. Emphatically no.

Q. Are you sympathetic towards racketeers?

A. No, sir.

[fol. 797] Q. Judge, have you sent any messages to the District Attorney, such as, "Don't rock the boat"?

A. I have never spoken to Mr. Garrison at all. I have never sent any messages by his assistants, any special officers, any lawyers, or anybody at all at any time in any manner, shape or form, suggesting how Mr. Garrison should run his office.

Q. Did you or have you in any way attempted to block or obstruct the District Attorney in his efforts to close clip joints and suppress vice in the City of New Orleans?

A. I have never done so in any manner, shape, or form. I have tried cases in which that same element (was involved), which may be considered racketeers. I have acquitted those who the public justice required should be acquitted, and I have convicted those who, in this Court's humble opinion, should have been convicted, and so sentenced them.

Q. Judge, is the system of assigning cases, such as jury cases and misdemeanors, from month to month, has that system been the same since you have been on the bench?

A. Insofar as this Court is concerned, it has continuously been the same system for 30 years, to my personal knowledge.

Q. Has District Attorney Garrison changed that system [fol. 798] in any manner since he became District Attorney?

A. Not insofar as my court is concerned; now insofar as his office is concerned, I don't know. I conduct the business of my court and I don't permit the District Attorney or anybody else to run my court.

Q. Well, who assigns cases in your court?

A. The allotment, process of chance.

Q. After they are allotted to your court, who makes the assignment?

A. You are talking about fixing cases?

Q. Yes.

A. The District Attorney has complete control over the docket under Article 17 of the Code of Criminal Procedure.

Q. Have you ever attempted in any way to regulate that fixing of the docket?

A. I have never sought to regulate the fixing of the docket by Mr. Garrison or any presiding district attorney. I have my own court to consider as to its operation and I

expect cooperation from any district attorney in connection with the operation of that office for the good of the public.

Q. Now, Judge, has District Attorney Garrison ever asked you to change the system of allotment or the fixing of cases for trial?

A. Mr. Garrison has consistently during the last several [fol. 799] months attacked me for my refusal to work on Friday at his suggestion. I don't permit Mr. Garrison to have me become a fife of his or in any way to have him instruct me as to when I will sit. The law doesn't do so. The law merely states that I shall have three jury terms per year. I have consistently over 18 years had eight jury terms per year.

Q. That is per month, sir?

A. No, eight jury terms of one month each per year, consistently.

Q. Now, Judge, as a result of a statement made by Mr. Garrison, which was published on November 2, 1962, have you been exposed to hatred, contempt, and ridicule?

A. Obviously and yes.

Q. Has that been by more than one person?

A. Obviously and yes again.

Q. Has that been more than one place?

A. Yes and obviously.

Q. Has that been in the City of New Orleans?

A. Yes, sir, among the misinformed or the uninformed particularly.

Q. Have you been hurt as a result of this statement?

A. That is obvious, and I repeat, yes.

Mr. Gremillion: We tender the witness.

[fol. 800] Cross examination.

By Mr. Organ:

Q. Judge, were you friendly to Mr. Garrison when he was sworn in as District Attorney?

A. I will go further than that: When I first met Mr. Garrison, he was an Assistant District Attorney under Mr. Hubert. We had mutual friends, and I was friendly over those years and I would not say that I was too friendly with Mr. Garrison, at the time of his induction. That is the true statement I make.

Q. You were not too friendly with him?

A. Not too friendly with him, no.

Q. Were you friendly with him in August of 1962?

A. No, sir.

Q. In August of 1962, you felt considerable animosity toward Mr. Garrison?

A. You used that word *animosity,* but you won't put it in my mouth. I say ~~that I was disappointed, disenchanted,~~ and I was resentful to Mr. Garrison, as any red-blooded man might be who is—

Q. Now, Judge—

A. Wait a minute. Let me finish. You won't cut me of. —as any red-blooded man, who has devoted 18 years of his life to his duties in his court as well as his position in this community, and when he impugns my honor and my [fol. 801] integrity, I am honestly resentful, particularly so.

Q. Now you say that he impugned your honor and your integrity in August of 1962?

A. I say that when he said that in November, he did.

Q. I am talking about August.

A. Yes. You want to know why I was resentful?

Q. I am asking you if you were resentful.

A. I am going to tell you. I am resentful because Mr. Garrison—that is why I made the point that insofar as his induction I was not too friendly, but when he appointed Mr. Pershing Gervais as his special officer, a thief, a grafter, admittedly in the Paternostro Case where he was a professional informer, a habitue of the places in the Quarter that they now denounce, yes, sir, I could see what was coming.

Q. So—

A. Not the way you are probably going to put it, but you can kill the patient, you know, with the operation a success.

Q. I see. Now did you approve of the rest of Mr. Garrison's appointments?

A. As what?

Q. The rest of his appointments in his office.

A. You want me to say that I approved of Mr. Frank [fol. 802] Klein? No, sir.

Q. I didn't bring up his name.

A. You asked me if I did, and I am going to say that I do not approve of his appointments. That was Mr. Garrison's concern, not mine, but I don't have to approve it.

Q. And you had a certain amount of malice toward Mr. Garrison for that reason?

A. I have no malice toward Mr. Garrison at all. I have a very strong resentment to any man who impugns my integrity and my honor, and I would expect any man who is a man to have the same resentment and to react to the same situation.

Q. Well, Judge—

A. But I wouldn't lie about Mr. Garrison as he has lied about me.

Q. Now, Judge, it is a fact that long before he made the statement which was published November 2nd, that you had a great deal of animosity towards him?

A. You used the word *animosity*, but you are not going to put it in my mouth. I repeat: I was disenchanted and disappointed, and so told Mr. Garrison shortly thereafter.

Q. Did you not say at one time—and I am sure you will admit this—that you said—

A. It is true—

[fol. 803] Q. —you said Mr. Garrison was *persona non grata*—

A. Certainly he was *persona non grata* at that time—that is absolutely correct—for the reasons I have just given to you.

Q. And that was in August of 1962?

A. That is correct.

Q. And because he appointed Pershing Gervais and Frank Klein to his staff?

A. Those are some of the reasons.

Q. Those are some of the reasons? Give us the rest of the reasons, would you, Judge.

A. That would be sufficient in my book.

Q. But did you have other reasons?

A. No, I couldn't say that I have any serious reasons or rather I would have to think it over, but insofar as—that is the obvious reasons.

Q. What is it you have against Mr. Frank Klein?

A. I don't think Mr. Klein is competent. Mr. Garrison told me in my office that he had fired Mr. Klein before he hired him. I never asked Mr. Garrison why he fired him before he hired him. He knows that. He is better able to say whether or not there was any reason for firing Mr. Klein before he hired him.

Q. Now, Judge, how would you describe your feelings [fol. 804] for Mr. Garrison in August. You won't use the word *animosity*, which is all right with me.

A. I have twice repeated that I was disappointed and disenchanted. I had contributed modestly financially to Mr. Garrison's campaign. I had worked very hard for Mr. Garrison. I never asked Mr. Garrison for anything to this day.

Q. Well, now, did this disenchantment in any way affect your handling of the en banc meeting of the judges on October 4, 1962?

A. Why should it?

Q. You did not let it affect you in any way?

A. Certainly not.

Q. Now at that time, did you have any difficulties, verbal difficulties, with Mr. Garrison?

A. At what time?

Q. In the en banc meeting in 1962.

A. You are permitted under the cross-examination to lead me. I don't know what you are talking about. Bring it to my attention and I will answer yes or not and I will give you an answer.

Q. You want me to have the question read back, Judge?

A. No, sir. I want you to tell me what you want to know from me.

[fol. 805] Mr. Organ: Read the question back, will you, please.

(Whereupon, the testimony from line 14 through line 21 on the foregoing page was read back by the reporter.)

Q. You don't understand the question?

A. I do not.

Q. Well, I will try and rephrase it so you will then.

A. Please do.

Q. In the en banc meeting of the judges wherein Mr. Garrison was present on or about October 4, 1962, did you have any verbal difficulties with Mr. Garrison?

A. Mr. Garrison said something about having borrowed some money. I asked Mr. Garrison for proof of that. If Mr. Garrison was going to expect us to repay him for the supposed loan, I asked Mr. Garrison to give us some proof of that fact, and Mr. Garrison shrugged his shoulders and said I should consult a psychiatrist.

The Court: Now just a moment. Off the record for a moment.

(Discussion off the record.)

The Court: All right, gentlemen, you may proceed. Are you ready?

Mr. Organ: Yes, Your Honor.

[fol. 806] Q. What did he state that he had used this money for?

A. I don't recall exactly what he said he had used the money for.

Q. You don't recall that?

A. I don't recall item by item. If you have any information, you asked me whether or not that was an item that he discussed.

Q. Well, I am just trying to find out, Judge, what your version of this incident was, that is all.

A. I understand that you are asking me what my version is, and I will give you an answer whenever you give me a question that I can answer.

Q. What did he tell you he used this money for?

A. I don't recall. I don't want to say that he told me at that moment some particular use of that money, because he was telling the newspapers also what he was using the money for over a period of time. Why he was going to borrow it, I have no recollection. I don't want to exaggerate, I don't want to tell an untruth. If you will ask me did he make this statement, I may be able to answer your question.

Q. Well, I will ask you this: Did he make the statement that he had used the money to suppress vice and make investigations to suppress vice?

[fol. 807] A. He may have said so. I have no recollection.

Q. He may have said that?

A. At that time.

Q. Now, Judge, was there any other thing prior to that time that you were disenchanted with Mr. Garrison over?

A. Well, of course, Mr. Organ, there probably was a number of matters that I don't consider, standing alone, of any real importance.

Q. Well,—

A. But I do consider the important things, and then the other ones probably fell right in line, but, if you ask me again what you might be driving at, I may tell you, because I may know what they are.

Q. All right. I am driving at a Pardon Board meeting where you accused—

A. Why don't you come right out and ask me. That is your privilege.

Mr. Organ: I am going to ask the Court to instruct the witness to answer the questions rather than instructing counsel how to conduct his cross-examination.

The Court: Well, of course, Mr. Organ, I think, as he says, he is under cross-examination. You could ask him about any actions that he might have taken, but, if you want to talk to him about conversations that he might have [fol. 808] had or incidents which might have arisen by reason of any conversations, I think it would be perhaps better that you ask him the question in such a manner that he could give you an intelligent answer.

Mr. Organ: Judge, I move the Court to instruct this witness to answer my questions rather than instructing me how to ask the questions. If he doesn't know the answer, all he has got to do is say so, but I don't think I should be subjected to having him tell me what questions to ask. If he can't answer, he can say so. If he doesn't understand the question, he can say so.

The Court: He has told you several times, Mr. Organ, if you will ask him the questions so that he can understand them, he will be glad to answer.

Mr. Organ: All he has to do is say, I don't understand the question, and I will repeat it.

The Court: All right.

Mr. Organ: But I don't think I should be subject to his pointing his finger at me and telling me how to ask a question. I move right now that the Court properly instruct the witness in the proper demeanor of a witness on the witness stand.

The Court: Off the record.

(Discussion off the record.)

The Witness: I cannot when he is asking me things that [fol. 809]. were happening so many times—

The Court: If you do not understand his questions, ask him to rephrase the question.

The Witness: All right. I will do so. I will put it in that way.

The Court: All right.

Q. Now, Judge, see if you can understand this: Did you not accuse Mr. Garrison of trying to intimidate the Pardon Board?

A. I did. Now let me answer why. Don't cut me off.

Q. I was going to ask you why.

A. All right. You are supposed to go ahead and ask me.

Q. Why did you accuse Mr. Garrison?

A. Because Mr. Garrison wrote a letter to every member of the Board, including myself, in which he made statements about a bonding company that was some eighteen or nineteen in number and that he opposed every one of those particular bonding company applications for remittitur. I could not conceive that there wasn't some justice in one or two or three or four, but Mr. Garrison in globo, in toto, objected to all of them, and then brought in a paragraph that he was having some difficulties with a man by the name of Walker, whom I wouldn't know if he walked [fol. 810] in this courtroom and that Walker had said some

things to him—I considered that a form of intimidation. That is my opinion, and I repeat it.

Q. Did he make any threats against the Pardon Board?

A. That was sufficient to me for a subtle intimidation, if you will, sir.

Q. Now do you deny that Mr. Garrison had a right to express his views to the Pardon Board?

A. I do not object to his expressing his views.

Mr. Organ: I have a copy of the letter, Judge (exhibiting document to Counsel).

Q. (Exhibiting document to witness) Judge, I will ask you to look at this copy and see if that is the letter that you have referred to.

A. I believe that is the letter. I haven't seen it.

Q. Could you mark the particular part of that that you feel intimidates the Pardon Board or tends to intimidate the Pardon Board?

A. I think the tenor of the whole thing was one of intimidation. That is my view, and I so express it.

Q. The entire letter is intimidation?

A. That is absolutely correct, the whole tenor of the letter, and I specifically pointed out what I considered the [fol. 811] bon mot, if you will, if I may use that expression.

Q. But there is no particular language in here in itself that you consider—

A. I have stated that I considered that particular language as intimidation to the Board and the fact that he objected to all of these people. There must have been some justice that the Pardon Board was to render in some particular case; they all couldn't be wrong and Mr. Garrison all be right.

Q. In other words, you deny that he had the right to express his views in all of these cases?

A. I do not say that sir. I did not say that. On the contrary, I accorded you the courtesy of a reply directly: He certainly has a right to express his opinion. So do I.

Q. Now the mere fact that he expressed his opinion would not be intimidation, would it, Judge?

A. Well, that is your concept, but when he expressed—

Q. Well, now—

A. I am telling you. That is your concept, it is not necessarily mine, and when he expressed an opinion that I am under the influence of racketeers, I say—I don't use the word *intimidation*, but I certainly think it's a pretty strong [fol. 812] expression.

Q. But getting back to the Pardon Board incident—

A. I have answered you on the Pardon Board, sir.

Q. Just so that we can get it clear—

A. I am clear.

Q. —your view is that he—because he opposed all of these bond returns, that that constituted intimidation?

A. Coupled with the other statement about Mr. Walker, whoever he is, yes, that constituted intimidation.

Q. Is the statement of Mr. Walker in this letter?

A. He said Mr. Walker—something about a man named Walker, a man in Baton Rouge, who had threatened him or something of that kind, what he was going to do with the Board of Pardons.

Mr. Organ: In connection with the testimony of the witness—

The Witness: If that is the letter, that absolutely was in the letter.

Mr. Organ: I have identified this as a copy of the letter.

The Witness: I haven't seen the letter in a considerable period of time.

Mr. Gremillion: Just as a matter of clarity, I am a member of the Pardon Board, too, and I got a letter from Mr. [fol. 813] Garrison about the same thing, and I am not at all certain that that is the particular letter that Judge Cocke is talking about, so, Judge, I would appreciate it if you would read that very carefully and make certain that it is the letter you are talking about.

The Witness: As I say, I don't know whether I have in my file the letter that—

Mr. Gremillion: I might say also that I didn't get a copy of that letter, but I did get a letter from Mr. Garrison on the same subject.

The Witness: (Reading)

"* * * In this regard, I would like to bring to your attention the fact that a Mr. H. A. Morgan * * *"

That is the man—I thought it was Walker—

> "—of Alexandria, Louisiana, who appears to be the general agent for United Bonding Company in Louisiana, has openly bragged to the undersigned that he would have all of the money which he lost as a result of forfeiture returned to him by the Pardon Board. This boast was made to me by Mr. Morgan shortly after my taking office and instituting my announced policy of tightening up * * * "

[fol. 814] etc., etc. That is what I refer to.

Mr. Organ: In connection with the testimony of the witness, I offer and introduce in evidence, as "Exhibit D-21," the document just read by Judge Cocke.

(Whereupon, the document offered by Counsel was duly marked for identification as "Exhibit D-21," and received in evidence.)

Q. Now, Judge, were you aware of the fact that your statement that Mr. Garrison was *persona non grata* to you was published in the paper?

A. Yes. I read it.

Q. Were you also aware that his comment was also published in the paper when asked about your saying that he was persona non grata to you?

A. I remember he said nothing.

Q. Now, Judge, do you recall an occasion when he put an undercover man in Parish Prison to detect some illegal bonding solicitation?

A. I do.

Q. Now did you not have some ill feeling toward Mr. Garrison for that?

A. Well, of course, you use "ill feeling" and "animosity" in a different way than I do. I am resentful when a man takes advantage of my belief that he will treat me and [fol. 815] accord me the same courtesies that I would do to him, and I do feel very resentful, and I was most resentful about that contribution to the relationship between Mr. Garrison and myself. Now do you want to know about that? I am ready to tell you.

Q. Well, I want to ask you about one other thing.

A. All right.

Q. Did you ever make the statement to the Trial Assistant or the Section Assistant, Mr. Stephen Plotkin, substantially as follows: "I dare the District Attorney to bring any of those vice cases in my court"?

A. No, Mr. Organ, I made no such statement. Now I am going to finish that. I confronted Mr. Plotkin with the statement that Mr. Garrison signed or the petition Mr. Garrison signed asking for an open hearing, in which it was said by Mr. Garrison, over his signature, that I had made that statement to the assistant in my court, that he was to fix no vice cases that had arisen from his campaign on Bourbon Street or any B-girls. I confronted him with it and asked him to read this, had he made that statement to Mr. Garrison. He said, "I made no such statement to Mr. Garrison." Now wait. Let me finish.

Q. Go ahead, Judge.

A. Well, I know. But that is all right. You take your time and I will take mine.

Q. All right, Judge.

[fol. 816] A. All right. Good. I then said to Mr. Plotkin, "You are carrying tales, you see. You and I know what happened." Then I said, "Mr. Plotkin, you repeated what I told you?" He said, "You dared me to fix them." I said, "Didn't I say that facetiously, meaning by that that the reason why you are not fixing them is because you have got no case?" And we got to talking about the lighting cases and so forth. Mr. Plotkin just the other day, within the last few days, when I chided him about "I see you are called on to testify in the case. Have you any idea what you are going to testify to?" He said, "Oh, I suppose it's about that incident of your daring me to do so." I said, "Well, all I ask you to do is tell the truth." I have never said that Mr. Garrison's assistant shouldn't try any case; on the contrary, I have consistently sought to get him to try cases of that nature and even told him where I have found a number of cases in a drawer. He is putting them on now, but they weren't putting them on for quite some time there-

after. Now Mr. Plotkin will testify to that. He might lose his job, but he will certainly testify to it.

Q. Would you tell me as nearly as you can what you did say to Plotkin then?

A. Certainly. Mr. Plotkin—we were talking about the cases. I think it was about the time that Judge Wimberly had held unconstitutional the lighting case. I mentioned to [fol. 817] him that I had seen a number of cases in the drawer, in the files of Mr. Reagan, the Clerk in Mr. Haggerty's and my section, and I said, "Why don't you try some of those cases?" I said, "I am not going to try those cases. I will try whatever I think is necessary," and I facetiously said, "I dare you to fix any of those cases. You haven't got any cases, and that is the reason you haven't been fixing them." Now, of course, they have been fixed since all this trouble began within the last—well, this month.

Q. You did not say that in a serious vein then? Is that it?

A. Well, certainly not. Mr. Plotkin won't dare say that I said it another way.

Q. You say he wouldn't dare say that you said it?

A. He wouldn't dare say that I said it in any other way, but he carried it—or at least he denies that he carried it back to Mr. Garrison's office that way, but it appeared in the application for an open hearing, as you are now asking about, that I ordered him not to fix any cases with B-girls or vice cases growing out of his crusade on Bourbon Street. It is phoney and obviously phoney.

Q. You say his crusade on Bourbon Street is phoney?

A. I didn't say that. You know I didn't say it. I said [fol. 818] what was said in that was phoney. Why say his crusade on Bourbon Street—that I said that was phoney? I never said that his crusade as such on Bourbon Street was phoney at all, and you know I didn't say it.

Q. Judge, I am just trying to clarify it for the record.

A. Don't worry about that. I will clarify it if you miss it.

Q. All right. Well, now, would you—

The Court: Mr. Organ, I believe it is a little after five. Court will recess until tomorrow morning at 10:00 o'clock.

(Thereupon, at 5:05 o'clock p.m., hearing in the above-entitled and numbered cause was adjourned to Thursday, January 24, 1963, at 10:00 o'clock a.m.)

[fol. 821] (Pursuant to the adjournment, the proceedings in the above-entitled and numbered cause were resumed on Thursday, January 24, 1963, at 10:00 o'clock a.m., appearances being the same as heretofore noted in the record.)

COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Gremillion: May it please the Court, before we resume the cross-examination of Judge Cocke, I would like to bring something to the attention of the Court and that is this: I am informed by our stenographer, Mrs. Dietrich, that they have been going at a pretty terrific pace working here in the courtroom all day and having to work at night, and she tells me that she can't go much more than a day at this pace, because they are about to wear themselves out, and I know that I have things to do in Baton Rouge and I know that Your Honor in fact has been on the bench for three straight weeks now, and I know that you have got work in your district piled up, and for those reasons I would like to move the Court that when the State concludes its case today, or when we finish testimony today, whichever would be agreeable to the Defense, if they care to accede, but, in any event, I would move that when we finish today's work that we take a recess until the following Monday morning and then resume to the conclusion of the case.

The Court: At this time, the Court will state this: I want to go as far as I can today. In other words, it would be my purpose to hold court until 5:00 o'clock this after-[fol. 822] noon, and there have been several—of course, I live some distance from here, and I would like to return to my office by Saturday, which means that I would have to travel tomorrow, and I will have work stacked up in my office. More than one parish is embraced in my district, and I have held civil court all this month in two other parishes besides this criminal case, and it is my idea that

I would like to get through with this case as soon as possible, but since the situation has arisen with reference to the reporters and it was asked for by both the State and the Defense that the minutes or transcript of the previous day's proceedings be produced each morning, and the reporters are about played out on the matter—they say they can't take any more than one day—I think in view of the fact also that several legal questions have arisen in the trial of this case on which I would like to have the opportunity—I have no library facilities here, and I would like to have an opportunity to spend Saturday, probably Saturday night, in my library studying those legal propositions that have arisen so that I might more intelligently listen to the remainder of the testimony and the argument of Counsel. I want to state this, gentlemen: That I will perhaps ask for argument of Counsel at the conclusion of the testimony, and I will put you on notice at this time, and I hope and trust that we can conclude it some time next week. There are times perhaps that there [fol. 823] might seem to be a little lost motion in this case, but I think it has been excellently prepared both by the Defense and by the State, and I have not probably interjected myself to stop it at any time, because I think that all of the evidence that is legally admissible should be in the record. For that reason, I think that I will very favorably consider the motion made by the State and that we will perhaps adjourn this afternoon at 5:00 o'clock. I might make that announcement a little later on in the day, but at this time I will say that I am favorable towards that.

Are you gentlemen ready to proceed otherwise?

Mr. Gremillion: Yes, sir.

JUDGE J. BERNARD COCKE, having been sworn and having testified previously, resumed the stand for a continuation of the

Cross examination.

By Mr. Organ:

Q. Good morning, Judge Cocke.

A. Good morning, sir.

Q. Judge, were you aware of the raids that were being conducted by the District Attorney's Office on the French Quarter and the Canal Street B-joints?

A. I read it in the newspapers.

Q. Now, were you also not aware that the two people who spearheaded this drive on the French Quarter and [fol. 824] on these Canal Street B-joints were Pershing Gervais and Frank Klein?

A. I can only again say that I would have drawn that appreciation from reading it in the newspapers. I have no other way of knowing it.

Q. And yesterday afternoon on the witness stand, you attacked both of these men—vehemently?

A. I answered questions, sir, that you propounded me, if you consider that as what I testified to in the light of your questions.

Q. Now, you know, do you not, Judge, that I did not bring in the name of Pershing Gervais or Frank Klein in any of my questions?

A. I am concerned (sic) that you did not. That is correct. You asked my reasons, and I gave them to you truthfully.

Q. Go ahead.

A. I am finished.

Q. Now, Judge, I want to ask you one question and I hope you can give me a yes or no answer to this.

A. If I can, I will do so.

Q. Has Pershing Gervais, to your knowledge, ever been convicted of any crime?

A. He has not been convicted of the offense of which I spoke yesterday. Now I am going to explain. I said that

[fol. 825] he was a thief and a grafter. I reiterate and repeat it: Any man who confesses under oath in the trial of the Paternostro case that he, while a sergeant of police on the New Orleans Police Department, took $10.00 to $15.00 a week in graft in little brown currency envelopes, he is not anything more than a thief or a grafter, whether he has been convicted or not.

Q. Now, who did he testify for in this case?

A. For the Government, as an informer for the Government, that is correct, sir.

Q. Has he ever been indicted for any crime?

A. Not that I know of. If I knew, I would tell you.

Q. Have you ever appeared before the Grand Jury against Pershing Gervais?

A. I have not.

Q. Have you ever filed an affidavit against Pershing Gervais?

A. I have not.

Q. How long ago was that, Judge?

A. How long ago was what?

Q. This Paternostro case that you refer to.

A. I have to refer to my notes. (Referring to file) The certified copy of the direct and cross examination of Mr. Pershing Gervais in Case No. 27374 of the Criminal Docket, [fol. 826] case of *United States of America vs. Eldred J. Paternostro*,—I do not see that the certificate of the court reporter indicates on what date the testimony was taken.

Q. Well, to the best of your recollection—

A. Wait, wait. Let me finish. The United States Circuit Court of Appeals for the Fifth Circuit in Case No. 18,810, *Eldred J. Paternostro, Appellant vs. United States of America, Appellee*, the Fifth Circuit, composed of Tuttle, Chief Judge, Judges Pope and Gewin, Circuit Judges, Gewin being the organ of the Court, on November 2, 1962 did hand down a decision reversing the Lower Court in the Paternostro case, and in which decision the Court says:

> "Pershing Gervais testified that he received graft money in brown envelopes . . ."

Mr. Organ: If Your Honor please, all I asked the man was the date, and now he is going into what the Fifth Circuit Court says in its opinion.

The Court: That is in the law books.

Mr. Organ: All I asked him, Judge, was the date.

The Court: He has a right to a certain—

Mr. Organ: All I am asking for is the date, Judge. Now, if he wants to bring it out on redirect, fine, but all I asked for is the date of the trial of the Paternostro case, and he wants to read all the transcript and all the decisions of the [fol. 827] Fifth Circuit Court of Appeal, what they said about it.

The Witness: It's a fact you inquired—

Mr. Organ: Just a minute.

Mr. Gremillion: It certainly is responsive to the question. The answer is in the line of questions he himself developed.

The Court: I believe he only asked for the date, and then the Judge can give him the date, and, if the Judge later wants to make an explanation of what is said in there as to why he said it, I would think he would have a right to do so, but at this time he should answer when, whether he knows the date or knows not the date. Perhaps the date of the decision would tell us, Judge, as to what you were relying on.

Q. I just want the date of the Paternostro trial.

A. I don't know, sir.

Q. Do you know the date of these offenses you are talking about Pershing Gervais having—the date on which they occurred?

A. I assume they occurred in nineteen—I will have to look for that again—I would say it happened six or seven years ago, I believe. I would have to rely largely upon my recollection generally, as there is nothing here to indicate with any certainty the date.

[fol. 828] Q. Now, Judge, would you say it was defamatory to say that an official was quite sympathetic, to say the least, with gamblers and their kind?

Mr. Gremillion: What is that question? I can't hear you.

Mr. Organ: Read it back.

(Whereupon, the above question was read back by the reporter.)

A. Well, let me answer it this way: I have no objection to answering it, but I will give you my personal opinion or my legal opinion.

Q. That is what I want.

A. The issue that you seem to inquire about seems to me the crux of this case and a matter for this Judge to decide, not me, but, if you want my opinion, I will give it to you.

Q. I do.

A. I say there is no question about it being defamatory for these reasons: A judge may be charged, just as well by inference by a person without regard to whether he is an official, with a malfeasance in office in that he is sympathetic to those who violate a certain type of law, *mala prohibita* or *mala in se*, whichever way you want to look at it. When the District Attorney of the Parish of Orleans says that against judges before whom he practices on behalf [fol. 829] of the public, it is more than defamatory, it is criminally defamatory, because, if true, the judge should not be sitting on this bench.

Q. Well, Judge—

A. If untrue, it is a criminal defamation, as far as my personal views, sir.

Q. In other words, you say that, if a private citizen said it, it would not be as bad as if Mr. Garrison said it?

A. Isn't that obvious?

Q. You apply a different standard to him than you would a private citizen?

A. I do, most assuredly. From one who speaks officially, it is very difficult for the public to differentiate between James Garrison or Jim Garrison, the individual, and Jim Garrison, the District Attorney. The District Attorney is supposed to know what he is talking about on those matters; the average citizen may not know what he is talking about.

Q. Isn't it a fact that in the case of *State vs. Kenneth L. Dixon*, No. 31,117, State of Louisiana, Parish of Calcasieu, you held that those very words were not defamatory?

A. They may not have been in that particular instance, not because they might not have been factually so; they [fol. 830] may have not been legally so, in effect.

Q. Now isn't it a fact that in this case you held that that was merely a comment?

A. I don't recall. There was 80 some odd pages of the decision, and I don't recall any specific thing, and I still say that this Court has a perfect right to disagree with me. That is his concern, not mine.

Q. Well, Judge, you wouldn't have been nearly as concerned about this whole thing if Mr. Garrison had merely made those remarks about you personally, leaving out the rest of the Judges, would you?

A. I don't quite understand your question.

Q. You wouldn't have been as concerned about this case, nearly as concerned about it, if Mr. Garrison had made those remarks only about you rather than all the Judges?

A. Well, why would you think that I would not have been intensely resentful to have the statement made about me without regard as to whether it was made about the other Judges? He only compounded his conduct by bringing in eight of us, but I would have certainly been as resentful as I am now and have been, for having been singled out.

Q. Would you have always felt that way about it since you entered public life?

A. I don't understand your question again.

Q. Would you have been as resentful from the time you [fol. 831] entered public life and were a public official, to any such remarks about you?

A. Why, most assuredly, and I will give you an example: When I believed that his predecessor had dared to impugn my integrity in the manner in which I wrote a decision, I then went before the Grievances and Ethics Committee and demanded a hearing. That is how I felt about it. It wasn't half as bad as what this transaction presents. No man impugns my integrity or my honor or my honesty that I don't go to battle with him, no matter who he is.

Q. Judge, did you ever file a criminal defamation charge against Cicero Sessions?

A. No.

Q. Did you ever file a civil libel suit against Cicero Sessions?

A. No.

Q. Isn't it a fact that Cicero Sessions uttered and had published on the pages of the Times-Picayune in this City about you, the following:

> "* * * 'a man who has associated with gangsters and crooks and has no intention of abolishing organized vice in this city.' * * * 'his entire record has been one of favoritism, intimidation and persecution,' and asserted further that 'tipoffs on pending gambling raids [fol. 832] have come directly from his office.'"

Now don't you know that Cicero Sessions said that about you?

A. And you objected to my finger pointing, so you had better put your fingers in your pocket, too.

Q. All right.

A. So what?

Q. Don't you know that he said that about you?

A. I don't know whether he said that or not. Let us assume for the sake of argument that he did say that. We were in the midst of a very vicious campaign in which the Times-Picayune was supporting Mr. Sessions. The result was that, without regard to what he said, that I finished 30,000 votes ahead of Mr. Sessions and 16,000, a majority, over a field of five. Whether he said it or not, I don't remember.

Q. Did you consider it defamatory?

A. I most assuredly did.

Q. And what was your position in the Parish at that time?

A. District Attorney.

Q. So, if it was defamatory, it was a crime. Did you make any effort to charge him with that alleged crime?

A. I did not. I was not going to make any more, while I was District Attorney, of the man who made the statement, and after having whipped him, I didn't see any rea- [fol. 833] son to be bothered any more about it, because the public didn't believe it.

Q. Didn't he also say of you, sir:

"'* * * The racketeering vice lord and the district attorney of this city hand in hand, socially and commercially. It is a stench that rises in the nostrils of every decent man and woman in the City of New Orleans'"?

A. He may have said that.

Q. You never charged him with anything for that?

A. Didn't for the reasons just given.

Q. You never sued him civilly?

A. I never sued anyone for my honor. I don't put any price on it.

Q. Didn't he also say:

"The 'criminal combination that exists in New Orleans today,' Mr. Sessions said, 'is a parallel in its viciousness and corruption to Murder, Incorporated.'

"'It could, with all truthfulness,' Mr. Sessions continued, 'be called "Vice Incorporated," with Bob Maestri (Mayor Robert S. Maestri) as the chairman of the board of directors; Bernard Cocke, president; Freddie [fol. 834] Rickerfor, vice-president; Tom Hill, secretary-treasurer; Peter Hand, comptroller and chairman of the committee on arrangements; Jimmie Moran, public relations director, and "Beansie," chairman of the committee on locations.

"'I charge that these men have agreed that complete domination of the rackets in this city will be divided among Freddie Rickerfor, Tom Hill, and Peter Hand. I charge that "Buddee Cockey" has not only accepted, but actually solicited the support of these lords of vice and rackets in order to perpetuate himself in an office to which he has never been elected.'"

Do you recall that, Judge?

A. I don't recall it. I am not going to say for one moment that it wasn't reported.

Q. You never charged him with anything?

A. I did not, for the same reasons that I have just given you.

Q. Did he not also say in that same campaign, which was published in the same newspaper that Mr. Garrison's state-[fol. 835] ment was published in:

"'He betrayed the governor, who appointed him, by embracing every element he had publicly promised to destroy. He bit the hand that fed him, sold this community down the river, and pulled tight the noose of the rope of vice around our necks.

"'That is why I call this man "Judas-Brutus-Cockey," because he is the biggest turncoat and political hypocrite ever to disgrace public office in the state of Louisiana and he is by any standard of judgment morally unfit for any public office, much less that of district attorney of this parish."

A. As soon as you make the question, I will answer it.

Q. The question is: Do you recall that?

A. I don't recall it. He probably said it, and I want to say this in relation to that particular statement: I repeat that the public didn't believe it. There was 30,000 more that voted for me than voted for him; that I have been in another election since then in 1944, and I won that election by 30,000 votes and over 16,000 over a majority of five. [fol. 836] The public had an opportunity twice to judge of the truthfulness of those statements.

Q. Now didn't he also say in the same campaign:

"'My record is an open book. I am ashamed of nothing. The only fault that Cockey Cockey can find with me as an opponent is that I am fearless and honest. Two characteristics which I regret to say are absent in his makeup.'"

Now you do recall him saying that, but you—

A. I don't recall it. That is 20 years ago.

Q. Didn't he also say of you, sir:

"'His position as a racket-controlled, racket-supported candidate for district-attorney is by now so well known that the gracious thing for him to do would be to retire promptly to the private life which he abhors and which he found exceedingly uncomfortable during the time he was off the public payroll'"?

You deny he made that statement?

A. I do not deny any of it, nor do I deny that statement.

Q. Now, Judge, was it not also said of you by a Shirley [fol. 837] G. Wimberly, who, I believe, is now one of the eight Judges of the Criminal District Court, that you resorted to legal chicanery in the Charles Degan case, and was not that printed on the front pages of the paper which Mr. Garrison's statement appears in?

A. What date was that?

Q. January 10, 1942.

A. Yes. He was a candidate opposed to me, as I recall it, in that campaign.

Q. Didn't he charge you—didn't Shirley Wimberly charge you in the public press of the newspapers of this city that you allowed—that you filed charges as District Attorney against Charles Degan in this parish, knowing that there was no jurisdiction, and keeping the case open in this parish until after it had prescribed in the Parish of East Baton Rouge, where they would have jurisdiction? You don't recall that?

A. I don't recall anything—any of that. That is 20 years ago. I am not denying it occurred, but I am surely denying the truthfulness of all of these statements.

Q. My point is, Judge: You have never filed a criminal defamation charge against any one of these people before, and you have never filed a libel suit against the people who made these statements?

COLLOQUY BETWEEN COURT AND COUNSEL RE IMPEACHMENT OF WITNESS

Mr. Gremillion: If Your Honor please, I am going to [fol. 838] object to this. I have been very patient, because I wanted to let him bring it out, because I wanted to be fair.

Mr. Organ: This is for the purpose of impeachment.

Mr. Gremillion: He is going way far afield into something that happened 22 years ago, arguing with the witness, and the Code of Criminal Procedure then and now says that the District Attorney shall determine who, when, and where to prosecute, in his discretion, so it is a fact that that was the prerogative of the District Attorney, and he certainly cannot be questioned about it now or his in-

tegrity attempted to be impugned some 22 years later on something that was obviously a political campaign when everybody knows after the election is over with you generally turn around and say, well, I hope you are a good D.A., or something of that sort.

Mr. Organ: This is for impeachment purposes, if the Court please. The witness said he always would have considered it a criminal—

Mr. Gremillion: How can you impeach a witness when he is not denying that he said it and it is obvlously hearsay and was hearsay at the particular time? My impression of the law with reference to impeaching a witness is that he says it is not so and then you tell him, well, now, I am going to prove so and so, because you said so and so happened on such and such a date. You have to lay a foundation. [fol. 839] The witness is not saying it wasn't said. So he is not laying a proper foundation.

The Court: I think the evidence is pretty far-fetched, Mr. Organ. Of course, as far as criminal defamation is concerned, it is the prerogative—as the Attorney General has pointed out, the Criminal Code provides that the District Attorney is the sole judge of how, whom, and when he will prosecute, and that would be his prerogative. Of course, he has a right to his civil suit for civil libel, and that would be the prerogative of Judge Cocke. Now as to whether or not he cared to exercise that prerogative and bring a civil suit or whether or not the District Attorney desired—cared to exercise his prerogative and the duty that was imposed upon him solely, is a matter that is within his discretion. I believe Judge Cocke is not denying this. Having not denied it, I don't see how he could possibly be impeached. In other words, he admits these things were said, but he didn't pay any attention to them. Now whether he wanted to ignore them at the time that they were said in the heat of a political campaign, he had that right, but, if subsequently a statement is made which he thinks is defamatory and he desires to prefer a criminal charge, he has that right. He has his rights to exercise these privileges or not to exercise them just as they may impress him, as he so desires.

[fol. 840] Now I believe Judge Cocke has testified that these statements were made; that, in view of the fact of his overwhelming victory and the fact that the people of New Orleans didn't believe that about him, might have caused him not to have brought those charges, but he has a right—any time a man makes a defamatory statement, any citizen has a right to protect his honesty and his integrity and his sense of being well thought of in the community in which he resides, and that is the very purpose of the Criminal Statute for Defamation, that is the very purpose of the laws of libel in a civil suit. It gives a right to a citizen to redress any wrongs that might have been done to him. Rather than taking the law into his own hands, he has a right to go to the Criminal part of the Code to seek to have those wrongs redressed and his honor and his integrity vindicated, or he has a right to exercise his rights as a citizen and bring a suit for civil libel. Judge Cocke, I believe, has said that there is no price on his honor, and, therefore, he didn't file a civil libel suit, so I hope that it will always be in America that a citizen will have a right to have any wrong or transgressions against him or his honor—that he will have a right to have those wrongs or transgressions redressed under the privileges of the Law. For that reason, why, it couldn't be introduced for impeachment purposes, because Judge Cocke has admitted that all [fol. 841] of these statements were made. He hasn't denied it, so he can't be impeached.

Mr. Organ: Mr. Gremillion interrupted me when I was trying to state the reasons.

The Court: All right. Go ahead. If you have additional reasons, I will be glad to hear them.

Mr. Organ: And I never was able to finish my reasons for this.

The Court: That is all right.

Mr. Organ: The witness testified from the stand that any time anybody made any statements about him such as were made in this case, that he would consider that criminal defamation. Now, our purpose in this was to show that far worse statements have been made about him when he was District Attorney, and, if that constituted criminal defama-

tion, then he did not bring a charge, so he must not have considered it a crime at the time.

We will not pursue this matter any further.

The Court: All right.

Q. Now, Judge, are you acquainted with a man named Franklin Hay? Have you been acquainted with him?

A. Yes.

Mr. Gremillion: Franklin Who? I can't hear.

The Witness: Franklin Hay, H-a-y.

Q. Did you ever have a meal with Franklin Hay at Mosca's Restaurant?

[fol. 842] A. Yes. I think I have had two meals with him. Just a minute. Let me finish now before you ask me the next question.

Q. I wasn't interrupting you.

A. Both Mr. Hay and myself and Mrs. Hay had been friendly with the Pastor of the Catholic Church at Napoleonville or Labadieville, who is now in charge of the Catholic Diocese of Morgan City. I can't remember his name right at this time. We on two occasions visited him over a weekend, and either had drinks or had meals—I don't recall now—at Mosca's there at Waggaman or Waggaman Pond or somewhere on Highway 90. At that time Mr. Hay was a reporter for the New Orleans Item and was a police reporter for 25 or 30 years out here, and I had learned to know Mr. Hay and to have a high regard for Mr. Hay over those many years.

Q. Did anyone else join you in either of those meals?

A. I can't recall that anyone else joined us.

Q. You can't recall that anyone joined you?

A. No, sir.

Q. Now, Judge, you made a statement yesterday that Frank Klein, the Executive Assistant Attorney was incompetent. What factual basis do you have for that?

A. I have seen Mr. Klein in operation. I am now the victim of a misleading, if not uninformed, legal opinion [fol. 843] that he gave the Grand Jury in an effort to cite me for contempt for having revealed from the witness stand in my courtroom in an inquiry of a witness as to

whether or not he said what was said in the courtroom, that he said the same thing before the Grand Jury. The witness said yes. Now.

Q. Did you have any animosity toward Mr. Klein because of that?

A. Well, again you use the word *animosity,* I don't. I think that any man that prostitutes—

Mr. Organ: Let the record show the witness shaking his fist.

The Witness: All right. Then you put yours down at the same time.

Mr. Organ: Let the record show—

The Witness: It's a matter of evidence. I didn't object to your finger until you objected to mine, but let me say this:

A. (Continuing) —that any man who, in my opinion knowing better, prostitutes his oath of office to bring about a citation or an indictment improperly, is guilty of a crime. If he doesn't do that intentionally, but he blunders into doing it, the injury is still done to me, but he is misinformed.

Q. Now you say that Mr. Klein is guilty of a crime?

A. If he intentionally misinformed that jury, yes.

[fol. 844] Q. But you don't know about that at all, whether he intentionally misinformed them or not?

A. I don't, so I'd rather be charitable and say that he is uninformed.

Q. And you also make the charge that he is incompetent?

A. Well, that is what I meant. There are other reasons, but I can't remember all of them.

Q. Let me ask you this: There are other reasons you can't go into?

A. I didn't say that and you know I didn't say it.

Q. I am sorry.

A. I said I couldn't remember.

Q. I see. When Mr. Garrison was elected, did you not have in mind someone else for Executive Assistant to him?

A. If Mr. Garrison, you or anybody else says that I ever spoke to Mr. Garrison about any matter of patronage or any policy of any kind, I say it is a deliberate untruth.

I had no one in mind, never made any recommendations of any kind to Mr. Garrison.

Q. Judge, I didn't say that you did. I just asked if you had.

A. You are asking if I had somebody else in mind?

Q. Yes.

A. Well, why wouldn't I, if I had somebody in mind, [fol. 845] have expressed it to Mr. Garrison. But that is the very best evidence. I had nobody in mind, if you want to ask a direct question.

Q. Yes.

A. I didn't care. By the time the induction came, he had already broken his leg with me when I knew he was going to appoint Pershing Gervais.

Q. And you resented him immediately?

A. I resented that appointment from the beginning—unwholesome—it was an unwholesome appointment.

Q. I have no further questions, Judge.

A. Thank you, sir.

Mr. Gremillion: Judge, could we have about a two-minute recess? We had anticipated they would ask this witness a lot more questions, and I would like to confer with the witness a minute.

Mr. Organ: If Your Honor please, I move that be stricken from the record. The Attorney General has no right to anticipate I will ask any questions.

The Court: Let that last remark be stricken from the record, and the Court will recess for five minutes.

(Whereupon, a brief recess was taken.)

AFTER THE RECESS

Mr. Gremillion: Your Honor, we have no further questions of Judge Cocke and ask that he remain under the [fol. 846] rule. We may have questions on rebuttal after the Defendant presents his case.

(Witness excused.)

Mr. Gremillion: The State calls Superintendent of Police Giarrusso.

Mr. Organ: If Your Honor please, we have a subpoena duces tecum here for some documents, which I would like to file now. We ask that return be made tomorrow, but, in view of the motion of the State, it may be that we should make that Monday morning.

The Court: Very well.

Mr. Organ: So I will change that. Let's see. Monday is what?

The Clerk: The 28th.

The Court: Off the record.

(Discussion off the record.)

The Court: There is no objection to this order on the subpoena duces tecum?

Mr. Gremillion: No, not at this time.

The Court: Mr. Organ, I will change this to strike out "Friday, January 25" and put "Monday, January 28."

Mr. Organ: Yes, sir.

The Court: You may proceed with your examination.

JOSEPH I. GIARRUSSO, a witness called by and on behalf [fol. 847] of the State of Louisiana, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Gremillion:

Q. What is your name, sir?

A. Joseph I. Giarrusso.

Q. What is your occupation?

A. Superintendent of the New Orleans Police Department.

Q. How long have you held that position?

A. Since August 15, 1960.

Q. How long have you been in police work?

A. This is my seventeenth year.

Q. Has that all been with the City of New Orleans?

A. Yes, sir, it has.

Q. Where do you live?

A. In the City of New Orleans.

Q. Do you know Mr. Jim Garrison, the District Attorney?

A. Yes, sir, I do.

Q. Is he in court?

A. Yes, sir, he is.

Q. Mr. Giarrusso, are there any members of the Police Department assigned to the District Attorney's Office?

A. Yes, sir. We presently have 11 patrolmen assigned to [fol. 848] the District Attorney's Office.

Q. Are those police officers?

A. Yes, sir.

Q. On their assignment to the District Attorney's Office, do they wear uniform?

A. No, sir.

Q. Who requested the police officers that were assigned to the District Attorney?

A. The original request was made by Mr. Denis Barry around April 6, 1962 when he submitted 12 names to me. Subsequent to that, I met with Mr. Garrison, Mr. Klein and Mr. Barry. We went over the list of names that they had submitted, and the men that they requested were the men that were assigned to the office.

Q. And how many was that?

A. It was 12.

Q. How many have been assigned to other district attorneys?

A. The previous district attorney had been assigned nine men. This is the most men that had ever been assigned to the D.A.'s office.

Q. Now, Mr. Giarrusso, who picked these men out? Did you pick them out or did Mr. Garrison?

A. Mr. Garrison and his assistants.

Q. And you assigned the men that he requested?

[fol. 849] A. Yes, sir.

Q. Now, do you prescribe any duties for those men?

A. No, sir, I did not.

Q. I mean since they have been assigned to the District Attorney, did you prescribe any duties for them.

A. No, sir, I did not discuss that phase of it with Mr. Garrison or any of his assistants as to exactly what would be the nature of duties of the men assigned to his office.

I only assumed that the duties would be as the previous district attorneys' people.

Q. All right. In other words, they are there for the District Attorney's use for whatever he wants to use them for?

A. This is a courtesy, that is right, that is extended by the New Orleans Police Department to the District Attorney's Office. These men are full-fledged members of the Department. They are paid by the City of New Orleans and not by the District Attorney's Office.

Q. Now, have these men remained with the District Attorney since he was sworn in in May of 1962?

A. There have been some changes, some men have been retired and there have been some replacements. It is presently at 11.

Q. And they are still with the District Attorney?

A. Yes, sir.

[fol. 850] Q. Now, Mr. Giarrusso, has Mr. Garrison asked you for any assistance in the investigation of vice cases or any other type of cases since he has been in office?

A. To the best of my knowledge, I have not met with Mr. Garrison personally on any of the matters concerning vice. I have met on a couple of occasions with his First Assistant, Mr. Frank Klein. As I recall the situation, the District Attorney's Office and the Police Department have not sat down and talked this situation over in any detail. In August of 1962—it was on a Sunday in the early part of August that I received a telephone call from Mr. Frank Klein, who stated to me at that time that a witness—the best that I can recall—or if he was not a witness, an informer, was beaten up along the street and that he was pretty upset about the whole situation.

Mr. Organ: If Your Honor please, I am going to object to any more of this hearsay evidence. It has nothing to do with Mr. Garrison in this case.

The Court: Just answer the question that was asked you, Mr. Giarrusso.

The Witness: Yes, sir.

Mr. Gremillion: It wasn't our intention to go into that, Your Honor.

The Court: We understand.

Q. Now, Mr. Giarrusso, if Mr. Garrison had called on [fol. 851] you for assistance, would you have cooperated with him?

A. Yes, sir.

COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Organ: I object to that, if Your Honor please. That is not a part of the issues in this lawsuit at all.

Mr. Gremillion: Oh, yes, it is.

The Court: As I appreciate it, it is a question of the construction of the Act of 1960, Amendatory Act of 1960, with reference to the Fines and Fees and Forfeitures. A question of the right to use those for investigative purposes has been at issue throughout this case, particularly by the Judges, who have heretofore testified that it was their interpretation that the Act was perhaps unconstitutional as to that paragraph. I have had no chance to review the authorities, but I believe they based that on the fact that the Charter of the City of New Orleans, which one of the Judges testified was a constitutional provision and also testified as to the Marrero case and the Grosch, I believe, case, that the right of the investigative power rested and was vested solely in the Police Department of the City of New Orleans, so it has become an issue in the case and is an issue in the case, as I see it. It has been injected into the case by the Judges and by previous witnesses as to the validity of—it goes to the very heart, as I see it, of the right of the District Attorney's Office to use these fines and forfeitures for investigative purposes or investigating con- [fol. 852] ditions within the City of New Orleans, if it is in direct conflict with the Home Rule Charter, I believe they said, which was amended and put into the constitution, so it goes to the very heart of the complaint as to the cutting off of these investigative powers. Therefore, any construction of the very thing that the District Attorney is claiming, I would like to know, and I intend this weekend to look into the question of whether or not there is a constitutional prohibition, as to whether or not the District Attorney has these investigative powers, and certainly I think that he can show whether or not there was any cooperation as be-

tween Mr. Garrison and the Police Department of the City of New Orleans, particularly in view of the fact that I don't believe it is disputed that police officers were assigned to the District Attorney's Office. So, therefore, I think he can testify as to whether or not—now, as to the details of what might have been said out of the presence of Mr. Garrison of any proposed meeting or anything like that, I think your objection would be good, but I think he can testify positively whether there was or was not a meeting between the Police Department of the City of New Orleans and the District Attorney's Office.

Mr. Organ: Well, if that is what he is going to testify, if that was the purpose of the question, we have no objection to it.

[fol. 853] Mr. Gremillion: That is the sole purpose.

Mr. Organ: As to whether there was or was not a meeting, I don't have any objection to that.

The Court: All right.

Q. Let's see if I can straighten this up, Mr. Giarrusso. In addition to the police officers you assigned to Mr. Garrison's office since he took office, has he come to you and asked you for any more assistance of police officers?

Mr. Organ: If Your Honor please, that question is not to elicit whether there was a meeting between Mr. Garrison and Mr. Giarrusso.

Mr. Gremillion: All I am asking is did Garrison call on him for any more help.

Mr. Organ: Asking did Mr. Garrison say this to you is grossly misleading and not the subject of Your Honor's—

The Court: I think he has a right to show that, Mr. Organ.

Mr. Organ: To which ruling we respectfully reserve Bill of Exception No. 18 and ask that there be included in that bill the question, the answer, our objection thereto, the Court's ruling, all of the testimony of this case, including the previous objection and the Court's statement in response to the previous objection, and the entire record in the Bill of Information.

[fol. 854] The Court: At this time I am not going to allow the previous question or the previous statement of the Court to go into the bill for the reason that Counsel

has said he has no objection to that, but, for the purposes of this bill, the last question asked by the Attorney General, the objection, and of course, all of the last part of that statement will go in for the purpose of a bill.

At this time, the Court will state that it appears that one of the triggering causes of the giving of the statement on November 2, 1962 by Mr. Garrison to the press, on which this charge of defamation was made, was that this arose by reason of a dispute as to the investigations to be made and the right for the investigation to be paid for by the District Attorney. Throughout the record there have been, without objection, discussions of whether or not the last paragraph—I believe it is the last paragraph of Title 15, Section 571.11—as to the disposition of fines and forfeitures, concerning the disposition to be made and the right to the use thereof by the District Attorney of Orleans Parish. That has gone on throughout the trial of this case.

There has been injected into this case, without objection, the question as to whether or not that paragraph of that particular act, which is an amendatory act, is unconstitutional, is violative of the constitutional provisions with [fol. 855] reference to the Charter of the City of New Orleans, in which it was the contention of the Judges, and so testified to by them without objection, that they considered it unconstitutional for the reason that the police powers of the City of New Orleans were vested solely in the Police Department under the Home Rule Charter and under the constitutional provisions with reference to the Charter of the City of New Orleans. Therefore, the Court considers that it is very vital to a correct consideration of this as to whether or not this Defendant might or might not have called upon the City of New Orleans for additional help in addition to the police which were assigned to him, and I believe that there is no dispute that at least 12 policemen of his own choosing were assigned to his office at his request. That is not disputed. Therefore, the Court is of the opinion that it is perfectly permissible to show whether or not the District Attorney at any time called upon the Police Department of the City of New Orleans for additional help, and the Court reserves the right at this time to assign any additional reasons that he might have for this ruling to the

Bill of Exception which the Attorney for the Defense has reserved.

Go ahead and ask the question.

Q. Answer the question.

A. Would you repeat that.

[fol. 856] Q. Has the District Attorney called upon you for any more help with reference to the vice investigations?

A. No, sir, he has not.

Q. —or any other investigations?

A. No, sir.

Q. If he had called upon you, would you have cooperated?

Mr. Organ: If Your Honor please, I am going to object to that. The witness cannot state what he would have done unless he is presented with that fact. He said he didn't call upon him, so he can't get on the witness stand now and say what he would have done had some other circumstances arisen.

The Court: I think, Mr. Gremillion, he would have been governed by whether he was called upon as to what he might have done. I don't believe that should go into the record. Of course, since it wasn't done, any legal effect it would have would naturally flow from the fact that it was not done.

Mr. Gremillion: I won't argue the point. I think it is admissible, but I will bow to Your Honor's ruling.

The Court: All right.

Q. Have you cooperated with Mr. Garrison in every respect that he has asked you?

A. To the best of my knowledge, yes, sir, I have, because [fol. 857] I certainly think it is in the best interests that we do that.

Q. Mr. Giarrusso, has Mr. Garrison's activity in making raids—has that had any effect upon the Police Department of the City of New Orleans?

COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Organ: If Your Honor please, I am going to object to that. That has nothing to do with the issue here in question, whether Mr. Garrison defamed these eight Criminal District Judges.

The Court: Let's go off the record at this time.

(Discussion off the record.)

The Court: Now we will go back on the record please. At this time, the Court sustains the objection for the reason that the sole question to be presented in this case is as to whether or not there were defamatory statements with the intendment of Title 14, Section 47, et sequitur, and that any disagreement or lack of function as to the Police Department by reason of any investigative raids would be wholly foreign to the matter under consideration. The objection is, therefore, sustained.

Q. Mr. Giarrusso, has the action of the Judges in refusing to approve certain motions filed with them by Mr. Garrison for certain investigative work, has the action of the Judges in that respect hampered the activities of your department in investigating vice cases?

[fol. 858] Mr. Organ: If Your Honor please, I object to that. Whether the action of the Judges has hampered the Police Department has nothing whatever to do with this case.

The Court: I have been very liberal in this case, I think, both to the Defense and to the State, but let's get to the heart of the case, Mr. Gremillion.

Now off the record, please.

(Discussion off the record.)

Q. Mr. Giarrusso, has the action of the Judges in this case in refusing certain motions of the District Attorney for money from fines and fees, has that affected or hampered in any way the activities of the 12 men you assigned to the District Attorney?

Mr. Organ: If Your Honor please, I am going to object to that. The Chief has testified that he no longer has the control or supervision of those 12 men, that they are assigned to the District Attorney's Office, so he wouldn't possibly be in a position to say whether it has hampered or has not hampered them.

The Court: I presume that those policemen are still being paid by the City of New Orleans rather than the District Attorney's Office?

Mr. Gremillion: He has testified to that, Your Honor.

The Court: And, therefore, that he would certainly [fol. 859] have supervisory jurisdiction over those 12 policemen. No, let me finish my statement, Mr. Organ.

Mr. Organ: Certainly.

The Court: As to those 12 policemen that are assigned to the District Attorney, they are under the orders of the District Attorney and certainly those men have a right to investigate in behalf of the District Attorney or they have investigative powers as policemen. They are not deprived of their office as policemen of the City of New Orleans, if I understand correctly, by virtue of the fact that they might be on temporary duty and they were selected, if I understand the Chief's statement of a moment ago, they were selected by Mr. Garrison himself, evidently for some purpose, so I think that it is perfectly admissible to show whether or not the actions of the Judges in cutting off Mr. Garrison's funds has interfered with their duties as police officers of the City of New Orleans. I am not talking about as to Mr. Garrison; I am talking about as a policeman for the City of New Orleans. I think as to the 12 men—a moment ago you tried to include the whole Police Department, and I couldn't go along with the Attorney General on that, but as to the 12 policemen, I think it is admissible.

Mr. Organ: Well, if the Court please, in that case I think that the Attorney General should certainly lay the groundwork for asking the questions and show that the [fol. 860] Superintendent would be in a position to know whether these policemen had been frustrated in their duties.

The Court: I agree with you on that, so, if you will lay the foundation, Mr. Attorney General, it will be all right.

Mr. Gremillion: What foundation, Judge?

The Court: He has asked—you have got to prove knowledge on the part of a witness before he can testify to anything.

Q. Well, let me ask you: Do you know of your own personal knowledge that the activities of these 12 men have been hampered by the action of the Judges?

Mr. Organ: If Your Honor please, my objection is the same. He is going right back to the fact without laying the foundation.

The Court: I think the question is permissible, Mr. Organ.

Mr. Organ: Well, to which ruling we respectfully reserve Bill of Exception No. 19 for the reasons which we have just stated in response to the previous objection, that the foundation, the proper foundation, has not been laid to show that this witness is aware of what the activities of these policemen are since they have been turned over to the District Attorney's Office and are under the supervision of the District Attorney. We ask that there [fol. 861] be included in this Bill of Exception—

The Court: Mr. Organ, you are putting a lot of stuff in the record that is not there. Now, you can reserve a bill on that without stating a bunch of stuff into the record that is not in conformity with the question that was asked.

Mr. Organ: We reserve our Bill of Exception and ask that there be included the question, the answer, our objection to the Court's ruling, all of the testimony in the case, the entire record, and that the Bill of Exception will be Bill No. 19.

The Court: The only question that is before the Court at this time is the simple question by the Attorney General to the witness, if he knows of his own knowledge a certain state of facts. That statement. That question so obviously can be answered—can be asked—that it doesn't call for any comment from the Court.

Q. Would you answer the question.

A. Would you ask the question over again please.

Q. Yes. I said: Has the Judges' action, to your personal knowledge, hampered the activities of the 12 policemen assigned to the District Attorney?

A. Well, sir, the only way that I can answer that is this way: That my control over these men is only in reference to matters of discipline or administration, what they have [fol. 862] to do at the department in keeping their time. As to exactly having any direct control over their activities, I do not have any control, and I would have no way of knowing that.

Q. Now, is that policy of turning policemen over to the District Attorney for the District Attorney to use as he sees fit—how long has that been the policy of the Police Department?

A. I have only been in the department a little better than 16 years, and, of course, to my knowledge that is, the men have never been used in this capacity before.

Mr. Organ: If Your Honor please, I object to that as going beyond the question.

Mr. Gremillion: All I asked—

Mr. Organ: Excuse me, Mr. Gremillion. May I make my objection please, sir.

Mr. Gremillion: I thought you were through.

Mr. Organ: That is going beyond the question that was asked in this case. He asked how long the men had been turned over to the District Attorney's Office, and now the Chief is starting to testify about the men being used in this capacity or that capacity, and we object to that going into the record.

The Court: Mr. Gremillion, I think that you can only ask—insofar as you can bind this particular Defendant, [fol. 863] you can only ask as to the policemen that were assigned to his department.

Now I am going off the record.

(Discussion off the record.)

Mr. Gremillion: In that spirit of cooperation, I tender the witness.

The Court: All right.

Cross examination.

By Mr. Organ:

Q. Chief, are you familiar with the men that were assigned to the District Attorney's Office? Do you know them personally and their records?

A. Some of them I do, yes, sir.

Q. Of those that you know, what was the quality of the men?

A. I would say they were good men.

Q. They were outstanding men on your force?
A. I would say they were very good men, yes.

Mr. Organ: That is all. Thank you.
Mr. Gremillion: That is all, Chief.

(Witness excused.)

THE STATE RESTS

Mr. Gremillion: The State rests.

THE DEFENSE RESTS

Mr. Organ: If the Court please, at this time the Defense rests, and we have propositions of law to submit to the Court. We have here 16 propositions of law, which we [fol. 864] ask the Court to consider (handing document to the Court).

The Court: The Court will rule on them at 1:15.

(Thereupon, at 11:20 o'clock a.m., proceedings in the above-entitled and numbered cause were recessed to 1:15 o'clock p.m.)

[fol. 866]

COLLOQUY BETWEEN COURT AND COUNSEL RE CHARGES

(Pursuant to recess, the trial in the captioned cause was resumed at 1:35 o'clock p.m., all appearances as previously noted.)

The Court: The Court has been considering the seventeen different charges as to the law. I believe the Attorney General has a copy of those.

Mr. Gremillion: I don't have them.

The Court: Did he furnish you with a Memorandum of Authorities?

Mr. Gremillion: No, sir, he didn't.

The Court: He has submitted to me a Memorandum of Authorities, some of which were embraced in the preliminary motions—the motion to quash and other motions that were filed on the question of qualified privilege.

May I suggest to you that you furnish the Attorney General with a copy of those or I can let him have these.

Mr. Organ: Yes, sir. I don't have one myself. My co-Counsel furnished one to the Court.

The Court: I am satisfied that the Attorney General would want to see a copy of both of them.

Mr. Gremillion: He has only got sixteen.

The Court: Another one was brought to me by Mr. Trent while I was in Chambers. Give him the seventeenth, please.

Mr. Trent: Yes, sir.

[fol. 867] The Court: I will have to have time to look those over before we go into the argument and you will also, I presume, so I think that under the facts in the case, probably the Court should give you about an hour and a half. I'd like to have that much time and I don't know whether I will be able to pass on all of them even at that time. It was handed to me just before the noon hour and, of course, I had to have lunch and so I think I shall recess until three o'clock, to get a chance to examine those authorities and see whether or not they ought to go into the argument of the proposition of law and I will recess at this time until three o'clock.

(Thereupon, at 1:40 o'clock p.m., the trial was recessed, to be resumed at 3:00 o'clock p.m.)

[fol. 868] (Pursuant to recess, the trial in the captioned cause was resumed at 3:05 o'clock p.m., all appearances as previously noted.)

The Court: Mr. Gremillion, as I said in Chambers a moment ago, I suggested to Mr. Organ that we limit the arguments to thirty minutes. Will that be satisfactory to you?

Mr. Gremillion: Very much so.

The Court: Will that be satisfactory to you, Mr. Organ?

Mr. Organ: Yes, sir. If your Honor please, may we have a ruling on our propositions of law at this time?

The Court: I don't think I am required to rule on them until such time as I render a judgment. If you have any authorities that I have to rule on them prior to argument, I will be glad to have you cite them.

Mr. Organ: Well, it is my opinion that the Court is required to rule on them prior to argument and in order to preserve my rights, I will have to reserve a bill of exception on your Honor's not ruling.

The Court: You said you are familiar with the authority. Do you have the authority on that? My purpose is just to follow the law and if I understand, these are requested charges that you are asking me to charge myself on.

Mr. Organ: Yes.

[fol. 869] The Court: You know that the charge always follows the argument. There is no charge prior to argument.

Mr. Organ: The procedural law, as I appreciate it, is that the charges to a jury or to a Judge must be filed prior to the argument and must be ruled on.

The Court: They must be filed prior to the argument.

Mr. Organ: I only want to preserve my rights.

The Court: Let me hear from the Attorney General. What is your impression?

Mr. Gremillion: I think the Court is absolutely correct. I have no doubt about it.

The Court: Do you have any authorities to that effect, Mr. Organ?

Mr. Organ: I don't have any in my hand, if the Court please. I am only interested in making certain that the Court applies that law to this case and that I have an opportunity to reserve a bill of exceptions on any of these charges that are refused.

The Court: I will say this, Mr. Organ: You have a right to ask me to charge myself just like I have to charge a jury. There is no question about that. Now, when I pass on the case, you have a right to have me charge myself on the law before I make any rulings on the case. Then if I refuse any charge that you have requested of me—and my [fol. 870] appreciation of the law is such that disagrees with what you think is the law—then before I rule on the case, I would rule on yours. Then you may reserve your bill of exceptions at that time, which will protect your rights. Now, if you would rather, there are several of your

charges—I have looked at them and some of them I believe are correct. I may disagree on one or two or some of them and I have this right under the law. I have a right to qualify the requested charges. In other words, you can't ask me to charge a certain portion of a law without charging myself on all the law. Just take, for instance, on this question of malice means so and so. You are not completely and fully stating all that malice means. You state just a portion.

If I remember correctly looking at the question of qualified privilege, you ask me to charge myself only with a portion—to take only a portion of the law in Title 15, Section 49 and charge myself that this is the law. I would have to charge myself on any exceptions or variations in the article itself and charge myself as to the complete article and not a portion of that.

For that reason, if you want to insist on it—I don't mind hearing your argument but I can come back, as far as that's concerned.

These are properly presented at any time before argument. Usually a lawyer furnishes at the beginning of the [fol. 871] trial that he wants to charge, so that the Court will have an opportunity to examine them and so that the State will have an opportunity to urge its objection to the qualification and certainly I am going to give you that right.

You also handed to me a memorandum here consisting of several pages and, by the way, you have not signed the memorandum. I believe it's supposed to be signed by you and Mr. Garrison also. Come sign it.

Mr. Organ: As I understand it, the Court ruled that the charges—

The Court: Don't misunderstand. I will rule on them later after I have had an opportunity to examine them. If you want to argue later, that's all right with me. I am just trying to accommodate you as far as possible today but if you'd rather argue after I rule on them, it won't make a bit of difference to me.

Mr. Organ: If the Court please, I think the charges are supposed to be ruled on before the matter is taken under submission.

The Court: I think you are correct on that. I don't want to jeopardize your case in any way. I will extend to you the courtesy of coming back here and passing on that and considering your memorandum of authorities and allow you to argue and you can then submit the case. Would you rather do that? It will be all right with me.

[fol. 872] Mr. Organ: I just want to make sure, in the event my client is found guilty—

The Court: If you would rather do that, it doesn't make any difference because I have to come back and the argument is limited to thirty minutes and I can take these requested charges home, because there are a good many of them have got to be qualified.

Mr. Organ: I understand your Honor's position. I just want to make sure—

The Court: I will take them and consider them and all those charges that I think are correct—there are several of them that are correct—I will grant without qualification. Some I will qualify and if I find any that are incorrect, then I will refuse them and you can reserve your bill on that. I just was going to hear your argument while the case was fresh in your mind. If you want to, I will be glad to do it on the 4th day of February and by that time I will have acted on this and it will give me the opportunity of having about a week to study.

Mr. Organ: I appreciate the Court's position. I just don't want to waive my rights.

The Court: I don't think you would be waiving anything either way, you are in error on that, but if you would feel better satisfied, it won't hurt anything to have an extension of time. Mr. Attorney General?

[fol. 873] Mr. Gremillion: Yes, sir.

The Court: Has he furnished you with a copy of the requested charges?

Mr. Gremillion: I have a copy of the seventeen motions and a copy of his memorandum.

The Court: When can you give me an answer to his Memorandum of Authorities?

Mr. Gremillion: We'll give it to you, say in about seven days. Would that be all right? You want it quicker?

The Court: When do you expect me to study it? I am coming back on the 4th of February.

Mr. Gremillion: I have been so concerned with this case, I am not conscious of what date it is today. What is the date of the month?

The Court: Today is the 24th.

Mr. Gremillion: We want to be as accommodating as we can. Suppose we send it to by Tuesday—this coming Tuesday?

The Court: Maybe I'd better set that date later.

Mr. Gremillion: I will send it to you tomorrow.

The Court: No.

Mr. Gremillion: Our memorandum will be substantially the same one that was presented on the motion.

Mr. Gremillion: Would you like me to send it by Monday?

[fol. 874] The Court: Tuesday will be plenty time. I can study it.

Mr. Gremillion: We don't want to delay this either. I am ready to go.

The Court: I am offering that but he seems to want that passed on before we argue.

Mr. Organ: I am not delaying this thing. I am ready to argue right now but before we do, we want to reserve a bill on each of our charges because we feel—

The Court: I have granted you time in order for me to study them. Mr. Gremillion, if you will get me your authorities, say by Tuesday, I will try to come back on Monday, February 4 and I will hear arguments and take the case for submission at that time.

The Court now stands adjourned until Monday, February 4.

(Thereupon, at 3:15 o'clock p.m., the trial was recessed to be resumed at 10:00 o'clock a.m. on Monday, February 4, 1963.)

[fol. 875a]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

NO. 177-418

SECTION "C"

STATE OF LOUISIANA

VS.

JIM GARRISON

Transcript of Trial Proceedings—February 4, 6, and 28, 1963

[fol. 877] Monday, February 4, 1963

(Pursuant to the adjournment of Thursday, January 24, 1963, proceedings in the above-entitled matter were resumed at 10:00 o'clock a.m., on Monday, February 4, 1963, appearances being the same as heretofore noted in the record.)

Proceedings

COURT'S RULING ON PROPOSITIONS OF LAW

The Court: There have been presented to the Court seventeen so-called propositions of law, which are in reality charges of the Court, and I believe, Mr. Organ, that you wanted me to rule on them before you—of course, under the law, they are ruled on between argument and the submission of the case, but, at your request, I will rule on them before argument, so I will do that at this time.

I have been presented with a request for seventeen special charges in this case by the defendant, through counsel. This the defendant has a right to do and is governed under the provisions of LSA-R.S. 15:390, which provides as follows:

"The prosecution and the defense have each the right to present to the court, before the argument has begun, any written charge or charges, and request that the same be given. Except as otherwise provided [fol. 878] herein, the judge must give every such requested charge that is wholly correct and wholly pertinent, unless the matter contained in such charge have been already given, or unless such charge require qualification, limitation or explanation." (See also decisions in footnotes thereunder.)

From a reading of the above, it will be seen that if the matter is not wholly correct and pertinent or if it requires qualification, limitation or explanation, the Court is not required to grant the charge. However, I feel that even though some of the charges may not be wholly pertinent and require qualification or explanation that I should grant some of the charges with certain qualifications.

I am, therefore, granting the propositions number 1, 2 and 3 without any qualification whatever.

With regard to

Proposition of Law No. 4

"Where the defamatory statement is a comment upon the conduct of a person in respect to public affairs and is made in the reasonable belief of its truth, the statement is qualifiedly privileged, and to obtain a conviction under these circumstances the [fol. 879] State must prove actual malice on the part of the accused when he made the statement, regardless of its truth or falsity,"

referring to Article 49, Louisiana Criminal Code. This proposition is granted with the qualification that Article 49 of the Louisiana Criminal Code should be set forth in full, and is quoted as follows:

LSA-R.S. 14:49—Qualified privilege

"A qualified privilege exists and actual malice must be proved, regardless of whether the publication is true or false, in the following situations:

(1) Where the publication or expression is a fair and true report of any judicial, legislative, or other public or official proceeding, or of any statement, speech, argument, or debate in the course of the same.

(2) Where the publication or expression is a comment made in the reasonable belief of its truth, upon,

(a) The conduct of a person in respect to public affairs; or

(b) A thing which the proprietor offers or ex- [fol. 880] plains to the public.

(3) Where the publication or expression is made to a person interested in the communication, by one who is also interested or who stands in such relation to the former as to afford a reasonable ground for supposing his motive innocent.

(4) Where the publication or expression is made by an attorney or party in a judicial proceeding."

Proposition of Law No. 5

"Where the facts in a criminal defamation case are not disputed, the question or privilege is purely one of law. *State* v. *Lambert*, 188 La. 968, 178 So. 508."

Proposition of Law No. 5 is granted insofar as being a partial statement of the law in the case of *State* v. *Lambert*, 188 La. 968, 178 So. 508. This is qualified in that this statement should be read in connection with a reading of the whole of the case to have its proper application.

Proposition of Law No. 6

"Malice means hatred, ill-will, or hostility to another. It characterizes all acts done with an evil disposition, a wrong and unlawful motive and purpose, [fol. 881] the wilful doing of an injurious act without lawful excuse. The term not only implies wilfulness, but a wrongful intent. Clark and Marshall, Crimes, p. 76, sec. 48 (1952).

Proposition of Law No. 6 is granted with the qualification that this is a partial statement of the law and is not a complete statement of the meaning of malice, and this should be considered only in connection with a complete statement from the quoted authority, in addition to proper definitions and to authorities and the jurisprudence defining *malice*.

Proposition of Law No. 7

> "To prove actual malice the State must show, by extrinsic evidence of personal ill feeling or by intrinsic evidence such as the exaggerated language, mode and extent of the publication, that the accused acted through hatred, ill will, and a wanton desire to injure. *State* v. *Lambert*, 188 La. 968, 178 So. 508.

Proposition of Law No. 7 is granted with the qualification that this is not a correct statement of the law in full as was held in the case of *State* v. *Lambert*, 188 La. 968, 178 So. 508. A correct statement in that case of the principle of law is as follows:

> [fol. 882] "(5, 6) If the privilege is only qualified the onus lies on the plaintiff in a civil suit or on the State in a criminal prosecution of proving actual malice. This may be done either by extrinsic evidence of personal ill feeling or by intrinsic evidence, such as the exaggerated language, the mode and extent of the publication, and other matters in excess of the privilege. Odgers on Libel and Slander, 2d Ed., p. 438."

This is also qualified that it is a statement taken out of context of the decision as a whole and it will be read in connection with the other statements contained in the case of *State* v. *Lambert*, *supra*.

This is further qualified in that it is not a complete or accurate statement as to malice, but malice is subject to other definitions, and the State is only required to prove malice where a qualified privilege exists. Therefore, the definition stated requires many additional explanations; particularly in the fact that the intrinsic evidence does not have to, but may show a wanton desire to injure. The cited

case does not say that there has to be in addition to hatred and ill will, a wanton desire to injure in connection therewith.

Proposition of Law No. 8

[fol. 883] "A comment is the expression of the judgment passed upon certain alleged facts by one who has applied his mind to them, and who, while so commenting, assumes that such allegations of fact are true. Where the accused sets out the facts of a situation correctly, and then draws a derogatory inference from those facts, stating it as his inference, this inference is a comment and is qualifiedly privileged. *State* v. *O'Donnell*, 141 La. 887, 75 So. 811."

Proposition of Law No. 8 is granted in part. It is granted in that the comment is an expression of the judgment passed upon certain alleged facts by one who has applied his mind to them, and who, while so commenting, assumes that such allegations of fact are true. However, this is qualified in that authority for this Charge also provides that the assertion of a fact is not a comment at all. Further it provides:

"Comment on well-known or admitted facts is a very different thing from the assertion of unsubstantiated facts for comment. There is no doubt that the public acts of a public man are lawfully made the subject of fair comment or criticism, not only by the press, [fol. 884] but by all members of the public. But the distinction cannot be too clearly borne in mind between comment or criticism and allegations of fact, such as that disgraceful acts have been committed, or discreditable language used. It is one thing to comment upon or criticize, even with severity, the acknowledged or proved acts of a public man, and quite another to assert that he has been guilty of particular acts of misconduct." *State* v. *O'Donnell*, 141 La. 887; 75 So. 811.

Otherwise, it is granted only insofar as it may be read and taken in connection with a reading of the whole of the case of *State* v. *O'Donnell, supra.*

Proposition of Law No. 9

"Fair comment in the law of defamation is a comment which is either true; or which, if false, expresses the real opinion of its author, such opinion having been formed with a reasonable degree of care and on reasonable grounds." Clark and Marshall, Crime: p. 628, sec. 434 (1952).

Proposition of Law No. 9 is granted as a statement of [fol. 885] law contained in Clark and Marshall, *Crimes*, p. 628, sec. 434 (1952), referring, however, to a rule otherwise contained in the article, and the statement is only a partial statement of the law and is qualified to be only a partial statement of the legal principles set forth by the author in connection with the remainder of the statement, and is further qualified by the jurisprudence of our law in such cases governing. Qualified further by a correct and true definition and application of the word "reasonable" to the facts in this case.

Proposition of Law No. 10

"Public officials may be regarded as inviting comment by any member of the public, and a right of fair comment exists, for which there is no criminal liability, as long as the critic acts in good faith, limits himself to a comment on the true facts, confines himself to criticism of that matter in which the public is interested, and confines the publication of his criticism to the area in which the defamed person has made his actions public. *Wharton's Criminal Law and Procedure*, v. II, p. 770, sec. 899 (Anderson, 1957).

Proposition of Law No. 10 is granted as a partial statement of the law by the author in Wharton's *Criminal Law and Procedure*, and must be taken and read in connection [fol. 886] with the whole of the subject; and is further qualified by the jurisprudence of this State and the principles of law in such cases governing. Particularly is it qualified by LSA-R.S. 14:49, which provides that the comment must be made in the reasonable belief of its truth.

Proposition of Law No. 11

"Public tions made in the discharge of a public duty under authority of law are privileged: Burdick, *Law of Crime*, v. 3, p. 166, sec. 795 (1946); see *Deshotel* v. *Thistlewaite*, 240 La. 12, 121 So. 2d 222."

Proposition of Law No. 11 is rejected for the reason that it has no application to the facts in this case and is not a full and correct statement. It is further rejected for the reason that it would require an extended qualification, explanation and limitation if it were applicable. Further, the statement is incomplete and under these circumstances, the Court is not required to charge this. LSA-R.S. 15:390 and cases thereunder. Further, it is not a complete and correct statement of the Court's ruling in the case of *Deshotel* v. *Thistlewaite* cited.

Proposition of Law No. 12

"In Louisiana the district attorney is the elected representative of the public and it is his duty to inquire into the fact of the commission of crimes. [fol. 887] Arts. 17.1, 18, La. Code Crim. Proc."

Proposition of Law No. 12 is granted with the qualification that it is a partial statement of the duties of the district attorney. Full statement as to his duties are contained in LSA-R.S. 15:17.1 and 15:18, as follows:

"The attorney-general or any district attorney when informed that a crime or misdemeanor has been committed and that no complaint or declaration thereof has been made before any judge or justice of the peace shall inquire ex officio into the fact by causing all persons believed to have some knowledge of the fact to be summoned before a judge or justice of the peace, that their depositions may be taken.

"The district attorney is the representative of the public and the legal adviser of the grand jury. Whenever required by the grand jury, it shall be the duty of the district attorney of the parish to attend them for

the purpose of examining witnesses in their presence or of giving them advice upon any legal matter."

[fol. 888] Proposition of Law No. 13

"Article 1, Section 3, of the Louisiana Constitution and the First Amendment to the United States Constitution require that persons be given the opportunity to inform the community of both sides of an issue of public interest. The purpose of these constitutional guarantees is to protect parties in the free publication of matters of public concern, to secure their right to a free discussion of public events and public measures, and to enable every citizen at any time to bring the government and any person in authority to the bar of public opinion by any just criticism upon their conduct in the exercise of the authority which the people have conferred upon them. Cooley's 2 Constitutional Limitations (8th ed. 1927) 885; *Wood* v. *Georgia*, 370 U.S. 375."

Proposition of Law No. 13 is granted with qualifications and note that with reference to Article 1, Section 3 of the Constitution of Louisiana, it is provided:

"No law shall ever be passed to curtail or restrain the liberty of speech or of the press; any person may speak, write and publish his sentiments on all sub-[fol. 889] jects, being responsible for the abuse of that liberty."

Also, the statement is evidently one taken out of context from the decision of *Wood* v. *Georgia*, 370 U. S. 375, which was a contempt proceeding and not an action in defamation, and the statement made should be taken in connection with a reading of the decision as a whole, with the additional qualification that all proceedings had in an action for contempt do not necessarily apply to an action for defamation. This is an action for defamation under the provisions of LSA-R.S. 14:49 which provides that there must be a reasonable belief in the truth of the comment.

Proposition of Law No. 14

"The role that elected officials play in our society makes it imperative that they be allowed freely to express themselves on matters of current public importance. The First Amendment to the United States Constitution afford an absolute privilege to an elected official who expresses himself on such matters. *Wood* v. *Georgia*, 370 U.S. 375."

Proposition of Law No. 14 is rejected as an incomplete statement of the law on the subject. It is also not a correct statement of the law as to Article 1, Section 3 of the [fol. 890] Louisiana Constitution in that certain restrictions are placed upon the exercise of the right of free speech in that one is responsible if he abuses this liberty. Also, in this case the defendant is claiming a qualified privilege rather than an absolute privilege. It is not pertinent to the facts in this case as there could be no absolute privilege as defined in LSA-R.S. 14:50. It is also not applicable to the facts in this case.

Proposition of Law No. 15

"To supply the public need for information and education with respect to the significant issues of the times, a broad conception of the First Amendment to the United States Constitution is necessary. Freedom of discussion must embrace all issues about which information is needed or appropriate to enable the members of society to cope with the exigencies of their period. *Wood* v. *Georgia*, 370 U.S. 375, quoting from *Thornhill* v. *Alabama*, 310 U.S. '88."

Proposition of Law No. 15: This principle of law is embraced in *Wood* v. *Georgia*, 370 U.S. 375, quoting from *Thornhill* v. *Alabama*, 310 U.S. 88, and is granted as a statement of the law governing that case, which was one [fol. 891] for contempt rather than defamation, and is subject to the qualifications to a reading of the case as a whole and its application to the facts in this case.

Proposition of Law No. 16

> "Men are entitled to speak as they please on matters vital to them; errors in judgment or unsubstantiated opinions may be exposed, but not through punishment for the expression. Under our system of government, counterargument and education are the weapons available to expose these matters, not abridgment of the right of free speech. *Wood* v. *Georgia*, 370 U.S. 375."

Proposition of Law No. 16 is rejected for the reason that this is not a correct statement of the expression of the Court in *Wood* v. *Georgia*, 370 U.S. 375. Whether purposely or not, the words "for contempt" are left out of the quotation between the words "through punishment" and "for the expression." Therefore, the holding in that case is that one might not be punished for contempt for the expression." It will be noted here that the case of *Wood* v. *Georgia, supra*, was a contempt proceeding and the Court in that case was considering whether or not the out-of-court statements made presented a clear and present danger to the administration of justice and whether or not the contempt power to punish for the statements abridged [fol. 892] his right of free speech. Also it is not pertinent to the facts in this case.

Proposition of Law No. 17

> "Actual malice cannot be inferred from any qualifiedly privileged statement. It must be proven by extrinsic evidence of hatred, ill will or the wanton desire to injure on the part of the accused."

Proposition of Law No. 17 is granted but with the qualification that the State must prove malice where there is a qualifiedly privileged statement under the provision of LSA-R.S. 14:49, which has been heretofore quoted on another proposition submitted herein. It may be proven by extrinsic evidence of hatred, ill will, spite, enmity, or the wanton desire to injure on the part of the accused, or by intrinsic evidence such as exaggerated language, the mode

and extent of the publication, and other matters. *State* v. *Lambert*, 188 La. 968, 178 So. 508.

It is further qualified by the statement made in the case of *State* v. *Lambert*, 188 La. 968, 178 So. 508, taken in connection with the reading of the case as a whole in which the Court said:

> "(5, 6) If the privilege is only qualified the onus lies on the plaintiff in a civil suit or on the State in a [fol. 893] criminal prosecution of proving actual malice. This may be done either by extrinsic evidence of personal ill feeling or by intrinsic evidence, such as the exaggerated language, the mode and extent of the publication, and other matters in excess of the privilege. Odgers on Libel and Slander, 2d Ed., p. 439."

COLLOQUY BETWEEN COURT AND COUNSEL RE COURT'S RULING

Mr. Organ: Now, please the Court, I would like to take bills from some of Your Honor's rulings on our Propositions of Law at this time.

The Court: All right.

Mr. Organ: If Your Honor please, to start that out, we respectfully reserve a bill of exception to the rejection of Proposition of Law No. 11.

The Court: Let me find that in my file, please, sir. All right, sir.

Mr. Organ: The basis for this proposition of law being applicable is that the testimony of all of the complaining witnesses including the Judges who testified in this case, shows that Mr. Garrison's actions in this case arose directly out of his duties as District Attorney for the Parish of Orleans; that this is fully factually supported by all of the testimony in the entire record; that he was in discharge of a public duty when this controversy arose; and, further, [fol. 894] that he has the duty, as a matter of law, to inform the public of the conduct of his office, and if he is thwarted in the operation and conduct of his office, then he has the duty to inform the public of why he is so thwarted. And insofar as the statement not being a complete statement of the law, it is a complete statement of the law insofar as the publications of a person who has a public duty

to make such a publication is concerned and would be applicable in this case. So we include in our bill of exception all of the testimony in the case, the entire record, our request for Proposition of Law No. 11, His Honor's rejection of it, the reason for the rejection, and our statement as to why we feel that it is applicable to this case.

The Court: At this time the Court will state that it will perhaps amplify its reasons in the per curiam which will be attached to the bill of exception.

Mr. Organ: At this time, if the Court please, we respectfully reserve a bill of exception from His Honor's ruling on Proposition of Law No. 13. Although granting Proposition of Law No. 13, it qualifies it on the ground that the case of *Wood* v. *Georgia* is not applicable in this case since that involved contempt proceedings. Our position is that the case of *Wood* v. *Georgia* dealt with freedom of speech and it makes no difference whether freedom of speech is challenged through the media of contempt pro- [fol. 895] ceedings or criminal defamation proceedings. If freedom of speech protects an individual, it protects him against all challenges, and, therefore, we respectfully reserve a bill of exception from the qualification on the granting of this charge, and we ask that included in that bill be all of the testimony in the case, the entire record, our request for Proposition of Law No. 13, His Honor's ruling on our proposition of law, our reasons why we think it is applicable. That finishes my bill, Your Honor.

The Court: At this time, the Court will state that it will amplify its reasons assigned here for rejecting the charge in its per curiam.

Are you gentlemen ready to argue at this time?

Mr. Organ: No, sir. I thought you were going to amplify now.

The Court: No, sir.

Mr. Organ: No, sir. I have some more bills, if the Court please. At this time we respectfully reserve a bill of exception from the Court's rejection of Proposition of Law No. 14, as we appreciate His Honor's statement, for the reason that this rejection was partial in that the law set out in this proposition was contra to Article 1, Section 3, of the Louisiana Constitution. The law sets out—

The Court: Wait. Don't take this, please.

(Discussion off the record.)

[fol. 896] Mr. Organ: If Your Honor please, our position is that the case of *Wood* v. *Georgia* holds that freedom of speech is guaranteed by the United States Constitution, which cannot in any way be qualified, which cannot in any way be detracted from by any law of the State of Louisiana, particularly Article 1, Section 3, of the Louisiana Constitution, the decisions of the courts of Louisiana, the jurisprudence of Louisiana, or any other law. The Constitution of the United States is absolute, and, further, the entire record in this case disclosed that Mr. Garrison was an elected official with a duty to the people of the Parish of Orleans, and Proposition of Law No. 14 applies directly to his activity in the instant case. We respectfully reserve a bill of exception from the rejection of this proposition of law and ask that there be included in that bill of exception all the testimony in the case, the entire record in the case, our request for Proposition of Law No. 14, His Honor's ruling, our reasons for feeling that this is applicable to the instant case.

That completes that.

The Court: The Court reserves the right to amplify its ruling in rejecting Proposition of Law No. 14.

Mr. Organ: If the Court please, we respectfully reserve a bill of exception from Your Honor's rejection of our Proposition of Law No. 16 and ask that there be included [fol. 897] in that bill all of the testimony in the case, the entire record of the case, our request for Proposition of Law No. 16, His Honor's rejection of it, the reason for the rejection of it, and this statement of our reason for believing that this is applicable to the case.

As we appreciate His Honor's statement for rejecting this, it was rejected—one of the reasons was that it was rejected because *Wood* v. *Georgia* was a case for contempt, but, in our opinion, *Wood* v. *Georgia* applies primarily to freedom of speech under the United States Constitution and whether the challenge to that right is by a contempt proceeding, a defamation proceeding, or any other proceeding, is entirely immaterial. If the cloak of freedom of

speech is present, it protects the Defendant in this case from all challenges of the freedom of speech, including the instant charges, and we respectfully reserve a bill of exception from His Honor's ruling, and also we state at this time that we do not believe that the rights of the First Amendment to the United States Constitution can be abridged by any law of the State of Louisiana or any jurisprudence of the State of Louisiana.

The Court: The Court reserves the right, of course, to amplify its reasons in its per curiam.

Mr. Organ: At this time, the Defendant respectfully reserves a bill of exception to His Honor's qualification of [fol. 898] Proposition of Law No. 17, which, as we appreciate His Honor's qualification, was to the effect that the State must prove malice in cases only involving qualified privilege. It is our opinion that the State must prove malice in all cases of criminal defamation whether qualified privilege exists or not; that in cases of qualified privilege the State must prove actual malice; in cases where the qualified privilege does not exist, the State must prove legal malice. The State must carry the burden of proof of malice in all cases in a defamation, criminal defamation, case such as this, and we respectfully reserve a bill of exception and ask to have included in that bill all of the testimony in the case, the entire record, our request for Proposition of Law No. 17, His Honor's rejection of it, the reason for the rejection of it, our reasons for thinking that it is applicable in the case, and at this time, if Your Honor please, we would like to have the record show the numbers of these bills of exception.

We will ask that these bills be numbered, as we took them this morning, with respect to Proposition of Law No. 11, number that Bill of Exception No. 20; Proposition of Law No. 13, Bill of Exception No. 21; Proposition of Law No. 14, Bill of Exception No. 22; Proposition of Law No. 16, Bill of Exception No. 23; and Proposition of Law No. 17, Bill of Exception No. 24.

[fol. 899] Thank you.

The Court: All right. Are you gentlemen ready to argue?

Mr. Gremillion: Yes, Your Honor.

The Court: I believe that we are agreed on 30 minutes for each side? Is that correct?

Mr. Gremillion: Yes, Your Honor.

Mr. Organ: With maybe a few minutes one way or the other, if Your Honor please.

The Court: Well, would the State like to reserve a part of its time for its rebuttal argument?

Mr. Gremillion: Yes, I will, Your Honor.

The Court: How long would you like to have for your direct argument?

Mr. Gremillion: Oh, 10 or 15 minutes, 15 minutes at the most, and reserve the other 15 minutes for rebuttal.

The Court: Gentlemen, I don't presume that you want the argument in the record. Of course not.

Mr. Organ: I think the argument should be in the record, if Your Honor please.

Mr. Gremillion: There is nothing that requires it.

The Court: Can you cite the authority where the record has to take down the argument?

Mr. Organ: No, but I don't believe there is any authority that it should not be taken. It has all been taken up to [fol. 900] this point, and I think it should be taken from here on out. The argument of the Attorney General may very well contain something which we feel is prejudicial to our client's case.

The Court: I think at any time during the argument if he says anything that you feel is prejudicial, I think you have a right to object to that and to reserve a bill of exception to the ruling of the Court, if you are not satisfied that the ruling is correct. I don't know of any law that would require all of it to go into the record, and I don't know how it is being paid for or who is paying for it.

Mr. Organ: Judge, Fines and Fees is paying for it. (Laughter)

The Court: I believe that Fines and Fees is under attack at this time, and I certainly wouldn't want the Reporter to suffer as a result of it.

Mr. Organ: I think 30 minutes of argument in this case is not going to make the Reporter suffer substantially more.

The Court: If she is not paid, I think any argument might make her suffer.

Mr. Organ: For the purpose of accuracy and any bills of exception, I feel that it should be reported.

The Court: Well, of course, it is a matter that addresses itself to the Court's discretion. There is no law for it and [fol. 901] I don't know of any reason why it should go in and I don't see where it could be of any material benefit, but, at the same time, I don't want it to be considered that the Court would shut a defendant off in a case from any rights that he might have or any right that he thought he might have, so I presume you will remember that she is taking it in making your argument. I think it is cluttering up the record, but I will exercise the privilege and allow it to be taken.

Mr. Organ: Thank you, sir.

OPENING ARGUMENT BY PLAINTIFF

Mr. Gremillion: If Your Honor please, this Defendant has been charged with defamation. We submit that the State has proved every element of defamation beyond a reasonable doubt. I have just listened to Your Honor frankly asserting the law applicable to this case, and I think the Court is fully apprised of the law that is applicable to this case.

As Your Honor knows—and I apologize for being repetitious—Article 14, Section 47, of the Code defines defamation as:

> "the malicious publication or expression in any manner, to anyone other than the party defamed, of anything which tends to expose any person to hatred, contempt, or ridicule, or to deprive him of the benefits of public confidence or social intercourse . . ."

[fol. 902] We submit that the State has proved beyond a reasonable doubt the publication in the public press of November 2, 1962, in which the Defendant made his statement which is the basis of the Bill of Information in this case. There is no evidence in this record whatsoever that contradicts the fact that that statement was made and that

that statement was maliciously made. The only defense in this case, the way I see it, is a qualified privilege.

When we argued the Motion to Quash and Demur, which was filed by the Defendant, this Honorable Court correctly stated at that time that the question of qualified privilege was a matter of fact and it was subject to proof. There is not one iota of evidence that proves that this defendant had a qualified privilege. Being merely a district attorney does not and never did give him the authority to be a character assassin.

The citation from the case of *State* v. *O'Donnell*, which Your Honor referred to a moment ago, fits this thing squarely, and this is a quotation from *Odgers on Libel*:

> "... It is one thing to comment upon or criticize, even with severity, the acknowledged or proved acts of a public man, and quite another to assert that he has been guilty of particular acts of misconduct."

[fol. 903] This record is replete with statement upon top of statement, uncontradicted, made by Jim Garrison, that these eight Judges—all eight of these Judges—were guilty of racketeering influences when they refused to approve some of the expenditures from his Fines and Fees account. The State has proven that that is false; the State has proven that it has given this defendant thousands of dollars in some hundred and some odd motions with which to pay the expenses of his office. The State has proven that he had 12 policemen, 11 now, that he could use as he saw fit, that were paid for by the State. Their pay wasn't even involved in the Fines and Forfeitures account. So there was no reason, other than the fact that it was a malicious statement, for him to make the statement on November 2, 1962 which impugned the integrity of eight Criminal District Judges, and at the time that I came into this case I did it because I thought the integrity of the court, the integrity of the judiciary, was involved.

Mr. Organ: I am going to object to that, if the Court please. Mr. Gremillion's reason for stepping into this case has nothing to do with whether or not Jim Garrison is guilty or innocent of a crime. It has nothing to do with it,

and I think that many people will question his motive for stepping into the case, if it comes to that.

The Court: Gentlemen, I don't care for you to indulge in personalities. I will say this, Mr. Gremillion: Perhaps it [fol. 904] would be—you have your duties as defined in the Constitution and Statutes of the State of Louisiana, and you may say that you were exercising those prerogatives and those duties.

Mr. Gremillion: I came into this case because I felt that it was my duty, just as I feel that no judge should sit on a bench who is guilty of racketeering influences. So, therefore, exercising my duty under the Constitution, I filed this Bill of Information.

I further submit that the State has proved beyond a reasonable doubt that the said statement was defamatory in that it accused eight Criminal Judges of being sympathetic to vice, deliberately blocking vice investigations, and being influenced by racketeers. I covered that just a moment ago when the State proved, uncontradicted, that that statement was false. The State has proved by the uncontradicted testimony that the statement held that the eight Criminal Judges were subjected to hatred, ridicule, and contempt that deprived them of public confidence. We put on members, working members, of the press to prove our case; we put on people who are intelligent, members of the news media, four or five reporters, two or three television reporters, people who know what they are talking about, and we have proved that he not only made this statement about questions of racketeering influences on November 2, 1962, but that he reiterated it to a meeting [fol. 905] of the Press Club here in New Orleans as late as some two weeks ago, in January of this year, some 45 days after the making of the original statement.

We proved by the testimony of Mrs. Shean that before the St. Anthony Catholic Church, a meeting out there, he again repeated the particular charges of racketeering influences to that particular body and went on to say further that it could raise no other question and, if anybody knew of any other question that it raised, that he couldn't think of it and that he would like to know. I submit that the

State has proved beyond reasonable doubt that the statement was made and published maliciously and that the actual—the Defendant's actual malice, that is, his wanton desire to injure the Judges, was without justification, and that that has been proven beyond a reasonable doubt.

The State's witnesses have been positive. They have come in and given testimony of all incidents where he elaborated on his attack on the eight Judges. Certainly Your Honor is conscious of the fact and knows that under Articles of the Criminal Code, particularly Article 4:40, that positive testimony on a given point must be given greater weight than negative testimony on the same point. We have proved beyond a reasonable doubt that he went out of the way to attack these Judges and that this was without justification. We proved that he called them "sacred [fol. 906] cows," we proved that he accused them of running rackets, we have proved many, many instances of extrinsic evidence that shows that he went out of his way to defame the particular Judges.

Now let me say that the State has proved also beyond a reasonable doubt that the Defendant's statement was false and that this has been proven by the uncontradicted testimony of the eight defamed Judges.

Revised Statutes 14:48 provides:

> "Where a non-privileged defamatory publication of expression is false it is presumed to be malicious unless a justifiable motive for making it is shown. Where such a publication or expression is true, actual malice must be proved in order to convict the offender."

As I say, there is no proof in this record that that statement was true or that there was any reasonable belief that it was true.

I submit further that the State has established the falsity of the statement and that there is no justifiable motive that has been shown in this record, and, therefore, his malice is certainly presumed under this section of the Revised Statutes, namely 14:48.

Now, if Your Honor please, let me say that all of our proof has been positive and direct. There has been an

[fol. 907] attempt, a feeble attempt, on cross-examination to negate certain testimony and certain facts but I submit that the State has proven every element of the essentials of this crime. The mere fact that the State—well, first of all, we proved that the statement was false, but the mere fact that this qualified privilege, which the Defendant claims exists—the mere fact that that privilege exists has got to be that the statement was true or he had any reasonable grounds for believing it true, and this record is devoid of evidence in that particular respect, so I submit that we have established beyond reasonable doubt that the Defendant published this defamatory matter, which was certainly untrue and malicious. That is the entire testimony and the entire record before this Court, and on the basis of this testimony, we submit that the only verdict that can be rendered by this Court is that of Guilty as Charged.

ARGUMENT BY THE DEFENDANT

Mr. Organ: May it please Your Honor, if I don't speak loud enough, will you please remind me to speak up.

Now, first of all, it appears to me that the entire evidence in this case is, the principal contention, the principal area of contention here, is the statement made by Mr. Garrison, which he readily admitted:

> "This raises interesting questions about the racketeer influences on our eight vacation-minded Judges. This [fol. 908] is a matter regarding which I will have much more to say a little later."

Now obviously, if Your Honor please, when someone says, "This raises interesting questions," that means it is a comment on what he was referring to by "this."

Now going to the statement itself, it is obvious that Mr. Garrison was referring to the Judges stopping his vice investigation funds, because just previous to that, in the second paragraph previous to that, he had stated:

> "The Judges have now made it eloquently clear where their sympathies lie in regard to aggressive vice investigations by refusing to authorize use of the D.A.'s

> funds to pay for the cost of closing down the Canal Street clip joints. I closed them, despite their (the Judges') obvious attempts to block me, they now seek to slap the D.A. on the wrist by making him pay for this successful operation out of his pocket."

Prior to that, in the same statement he reiterates that this is all based on the fact that they stopped his aggressive vice investigations by tying the purse strings to the Fines and Fees Fund so that he couldn't use it.

> "Obviously this is nothing more than a petulant slap [fol. 909] at our use of investigators to uncover vice conditions in the city—an operation with which the Judges have shown a remarkable lack of sympathy."

Again, he has not said that the Judges were sympathetic with vice people. He says that they are not sympathetic with his vice operation. Continuing on from that:

> "This was accomplished by the Judges tying the purse strings of the District Attorney's Fines and Fees and informing me that no further money could be used in the investigation of any vice conditions.
>
> "The Judges have specifically directed that the District Attorney's Office 'should not investigate anything' . . ."

etc.

The Court: Right there, Mr. Organ, did you see any proof or hear any proof in the record?

Mr. Organ: That they did stop that?

The Court: That they did it with that in view.

Mr. Organ: If Your Honor please,—

The Court: Read the last statement you made a moment ago.

Mr. Organ: "This was accomplished by the Judges tying the purse strings of the District Attorney's Fines and [fol. 910] Fees and informing me that no further money could be used in the investigation of any vice conditions."

The Court: My recollection of the record is—I may be in error, but I don't think that I am—that all of the Judges

said they never informed him or told him how to run his office or sent him any messages or directives of any kind. Am I correct on that or not?

Mr. Organ: If Your Honor please, I don't believe you are, and, if you will bear with me, I will go into it right now.

The Court: All right.

Mr. Organ: Judge Platt sitting right there (indicating), Senior Judge of this Court, took the witness stand in this case, and on page 485 of this testimony, in answer to a question by the Attorney General, testified:

> "Q. Well, Judge, as to those that have not been approved, what was your reason for not approving them? A. Well, to my recollection, we refused to sign warrants for undercover work, overtime work, warrants and the investigation, and there is one that we refused to sign because there was bids and it was over $1,000.00. That is the reason. We believe legally that that fund cannot be used for that purpose."

[fol. 911] Now, if the Court please, that was the Chief Judge referring to "we" when he presumably was talking about all of the Judges, but that is further supported in this record by Judge Malcolm O'Hara's statement on page 157 of the record, by ex-Judge William O'Hara's statement on page 221 of the record, by Judge Oliver Schulingkamp's statement on pages 317 and 355 of the record, by Judge Edward Haggerty's statement on page 383 of the record, and by Judge Thomas Brahney's statement on page 527 of the record, and we submit to Your Honor, if Your Honor please, that this record discloses clearly, unequivocally, that these Judges stopped use of funds for vice investigation.

Now, there was a red herring brought into this case on this five-out-of-eight rule, on the misunderstanding between Judge William O'Hara or ex-Judge O'Hara and the District Attorney when they brought the five-out-of-eight rule in because of that misunderstanding, but the five-out-of-eight rule has nothing to do—they obviously stopped the investigation of vice funds. They acknowledged that no five of

these Judges would authorize the use of these funds for vice investigation. There is clear, unequivocal proof right out of the mouth of the Defendant's own witnesses—I mean the Prosecutor's own witnesses—which binds the State in this case.

[fol. 912] In addition to that, if Your Honor please, I would like to go into the surrounding circumstances to see—just to show that under those circumstances, under all the circumstances of this case, the comments that Mr. Garrison made. Now he did not state, as the Attorney General said, he did not state, that these men are influenced by racketeers, he did not state there is a connection between these Judges and racketeers. He said:

> "This raises interesting questions about the racketeer influences on (these Judges)."

But let's go into the surrounding circumstances. If at any stage of this Your Honor feels like he wants to know what portion of this record I get these facts, I will be glad to tell you. Now I believe Your Honor will recall that the evidence clearly shows that during the previous administration of the previous District Attorney, there was an absolutely free hand on authorizing funds for the use of the District Attorney's Office, a free hand to the extent that they ignored the public bidding law, to the extent that men were allowed to charge for public relations, for entertainment, $8.00 a meal on an extradition proceeding, a free hand in that they were allowed to buy Cadillacs. Bearing that in mind, if Your Honor please, it must be remembered that the District Attorney was aware of this, it must be remembered that the evidence shows that the previous administration had never one [fol. 913] time had a refusal made by any Judge to any particular request out of the Fines and Fees Fund, not one time. That is substantiated in this record. In addition to that, if the Court please, when Mr. Garrison took office he had no difficulty getting approval for vice investigation funds from the Judges. We have established that when he first went into office he had no difficulty obtaining approval, and he did not run into difficulty until

after he had waged a successful campaign on Canal Street and closed up places that had been in operation for 20 years, from which Judge Malcolm O'Hara testified there had been a constant flow of vice.

In addition to that, if the Court please, these are some more of the surrounding circumstances: It is acknowledged in this record that at no time was any of these eight Judges ever criticized; ever brought to task, ever been reproached because they had authorized the use of any of these funds for vice investigation. The only objection came clearly from within themselves, not from any outside agency, the newspapers, the citizens, or anyone. At no time had they ever been criticized for this purpose, yet, on their own motion they stopped all vice funds, the use of all vice funds for investigation.

Now, if Your Honor please, I submit that this entire record is devoid, completely devoid, of the District Attorney ever being informed by any single one of these [fol. 914] Judges why they stopped his vice investigation funds. On the contrary, the evidence is clear that Mr. Garrison was not told why they stopped his vice investigation funds. It is true they had some difficulty on his carpeting, on his drapes, and on that, but that had nothing to do with the vice investigation funds. Because of a misunderstanding with Judge Wimberly and Judge O'Hara, the five-out-of-eight rule was put in.

The Court: Let me ask you this: There is nothing in the record there to show that Mr. Garrison ever went to them and asked them if they had—conceding, for the purpose of the argument, that they did stop the funds for vice investigation, there is nothing in the record, I believe, that shows that he ever went to them and sought to discuss it with any of them, is there?

Mr. Organ: If Your Honor please, there was an en banc meeting, which is the subject of the record.

The Court: I understand that. If I understand correctly, at the en banc meeting a question came up with reference to some drapes and carpeting for his office on which there was a disagreement between him and retired Judge O'Hara and Judge Wimberly with reference to signing that. Now at that en banc meeting, I don't believe

the record substantiates you that there was ever any conference of any kind between Mr. Garrison and the Judges [fol. 915] with reference to the vice investigation, in which they refused him—

Mr. Organ: I think Judge Platt was referring to the en banc meeting, to that, but, be that as it may, if the Court please—

The Court: I didn't hear it in the record, and I read over the record very carefully and I didn't see anything to that effect, so I was wondering whether it did arise that Mr. Garrison asked for funds to investigate vice or corruption and so forth and that the Judges refused him on the ground—

Mr. Organ: Well, he said, " . . . we refused to sign warrants for undercover work . . . " That was acknowledged.

The Court: Judge Platt, I believe—

Mr. Organ: —said that.

The Court: And he assigned a case on his interpretation of the law, as I understand. I don't want to interfere with your argument, but I do want to clear it, because we might miss something in the record. If I understand correctly, why, there was never any reason, that Mr. Garrison went to them and asked them for a reason or asked them why they might have stopped it. Is there?

[fol. 916] Mr. Organ: No, there is no evidence that Mr. Garrison went to them.

The Court: Or that they sent any message to him as to whether—

Mr. Organ: Yes, sir. I think the evidence is actually to the contrary, that he was not given any reason, and, of course, the State has the burden of proof—

The Court: All right.

Mr. Organ: —in all of these elements of the crime.

The Court: Go ahead with your argument.

Mr. Organ: Here is what Judge William O'Hara said:

> " . . . But if I had known that Mr. Garrison was using these funds or if he had ever asked me for any of these funds, I would have refused to give him (sic) and would have told him why and I think would have convinced him I was correct."

Obviously Judge O'Hara had never discussed the matter with the District Attorney. So, as far as this record shows, it is completely devoid of any reason for the Judges refusing to authorize vice investigation funds.

Now also, if Your Honor recalls, the record supports [fol. 917] the fact that the Judges invited—through Judge Platt invited the District Attorney to participate in an en banc meeting and express his views on the use of the Fines and Fees funds, but the evidence shows that when the District Attorney got there, the decision had already been made. He had no opportunity to express his views. They had already made their decision that there was going to be no more vice funds and there was going to be the five-out-of-eight rule.

Now, if the Court please, considering all of these circumstances, this is the District Attorney (indicating the Defendant). He is doing for the first time in the history of New Orleans a job of helping to rid this city of vice, permanently helping to rid the city of vice. He knows the previous administration had a free hand on Fines and Fees, he knows no one has criticized the Judges for any expenditures which they have authorized. He is just getting into it. He has already had some approval by the Judges for vice investigation funds, but as soon as he gets successful, substantially as soon as he becomes successful in this, he is closed out, completely closed out, from this without any reason given him, without any reason given him why they stopped his vice investigation funds.

In addition to that, if Your Honor please, the evidence shows that Mr. Garrison told the Judges at the en banc [fol. 918] meeting about his successful vice campaign. There can be no question but they knew about his successful vice campaign. They stopped his vice campaign by tying up the funds. And does that raise interesting questions in the mind of a reasonable man? I don't think it is necessary for Mr. Garrison to show that that was a fair comment for that question necessarily to be raised in the minds of all men under those circumstances, but certainly it raises the question of a reasonable man. A reasonable man could make such a comment that would raise the question in the mind, is there racketeering in-

fluence on these judges. He did not say there was a racketeering connection, he did not say just in what way there might be. He merely said, "This raises interesting questions about racketeering influence," and that is all he said. We submit to you that under those circumstances that is a reasonable comment by Mr. Garrison at that time.

Now there is a great deal more in this case than just what we have talked about. We feel what Mr. Garrison said as a matter of fact has been proven in this record out of the mouths of the prosecution's witnesses themselves. They did stop the vice funds—regardless of why, they did try to close it up with the five-out-of-eight rule, with this misunderstanding with Judge Wimberly and Judge O'Hara, they did stop the funds. They have ac- [fol. 919] knowledged that no five of those judges would sign vice authorizations for vice investigations.

They come up with the constitutionality of the statute. That is acknowledged as something that they have never raised to Mr. Garrison. Assuming that they had an absolute right to decide the constitutionality of that question, which I don't believe they did, assuming that, they admittedly never told Mr. Garrison of it. They admitted they did not come to Mr. Garrison and say, This statute is unconstitutional, we can't authorize anything out of it. If it is unconstitutional, even if they were sincere about that, why didn't they stop all of the payments out of the Fines and Fees funds? They only stopped the vice investigation funds. They only stop it when it comes to vice. They put in the five-out-of-eight rule, but on everything else, by their own evidence in the case, they approved thousands of dollars for other items, but not one penny for vice investigation, and we submit that that very definitely could reasonably cause a reasonable man to comment that this raises interesting questions about racketeering influence. There is no other motive in this record shown for the action of these judges in this case.

Now we submit that in any case, even if the Court could find on the face of what we think is overwhelming evidence that the Judges did not stop the vice investigation [fol. 920] funds, we submit that Mr. Garrison had every

right to believe, had reasonable grounds to believe, that they did stop this vice investigation fund. Those were the facts that he was stating, and, if he had reasonable grounds to believe that they did stop the fund, there are many people in public office—there is no doubt but what a qualified privilege exists and they are required to prove actual malice. I don't believe Your Honor can find from this record that there was any actual malice whatsoever by Mr. Garrison. At no time was there any evidence to show that his motive in this entire operation was anything except to do what he felt was the duty of the District Attorney's Office, which was to stamp out the constant flow of vice from the French Quarter and Canal Street. There was never anything, even in response to a statement made by Judge Cocke that the District Attorney was *persona non grata*. When the papers went to him, he had no comment, he made no reply. That was in August.

Now the evidence shows that two of the Judges—at that time two of the Judges had a certain amount of ill feeling, disenchantment, or whatever it was, with the District Attorney, because, for one, Judge Cocke didn't approve of some appointment he made in his office, and, for another, Judge William O'Hara was disappointed because he didn't put in a plan which he felt (was good), but [fol. 921] there was never one iota of evidence in the entire record that Jim Garrison had any malice toward any of these Judges whatsoever. He was merely stating in response—if the Court please, he didn't go out and seek these newspaper reporters to make the statement, this statement—he didn't make any effort to make sure this was published—they came to him and said, "What do you have to say? What do you have to say in response to Judge William O'Hara's statement?"

He sat down and he told them off the cuff, without any prepared statement or anything of that nature. Does that show the man was malicious?

Now we disagree with the Attorney General's statement that he called these Judges sacred cows. He likened the position of a judge to a sacred cow because they could not

be subjected to criticism in our society, but that is the extent of it. He did not call them sacred cows.

The Court: Let me ask you with reference to the record: Wasn't there a statement made to Mr. Reed, who was the news editor for WWL-TV, that he was going to put these sacred cows back to work, or something like that? Didn't he make that statement at that time?

Mr. Organ: He likened them to sacred cows, according to Mr. Reed.

The Court: Did he or did he not?

[fol. 922] Mr. Organ: I think substantially that, if Your Honor please.

Now cross-examination disclosed one very pertinent thing, I believe a statement that at that time Mr. Garrison was obviously a man trying to right a public wrong—if I am thinking of the correct witness—certainly nothing that he told any of these news men at any time showed there was any malice whatsoever in anything that he had to say. They have not shown actual malice. At no time has Mr. Garrison indicated malice whatever; even when they put in the five-out-of-eight rule, what did he say? He said, "We are going to try to work with it." Even in August when they said, "We are not going to authorize any more expenditures until the en banc meeting in October," what did Mr. Garrison comment to that? He said, "I think there should be a plan set," and then he was invited to work with them on the plan, and the plan was already set up before he got there.

Now all of these, if Your Honor please, bear on the state of the District Attorney's viewpoint on this at the time he made his statement of November 2nd. All of these facts we think are very pertinent to this case. Every one of these facts are established and are binding upon the Prosecution in this case, because they came right out of the mouths of the Prosecution's witnesses.

[fol. 923] The evidence will also show, if Your Honor please, that the District Attorney was carrying out campaign promises when he started this vice campaign, and he had a duty. If he were thwarted in carrying out his duties to the public—we believe that a reasonable man could assume that his campaign promises are part of his

duty to the public—if that is what the public voted him in office to do—we certainly believe if he is thwarted in that duty, he has an absolute right to inform the public of why he is thwarted in that duty, and that is exactly what Mr. Garrison did. There isn't the slightest iota of evidence in this record that Mr. Garrison had an unlawful motive or purpose.

I even go this far, if the Court please: Judge William O'Hara, with whom the only conceivable misunderstanding between Mr. Garrison and the Judges came up in this case—the only conceivable way where his integrity, his honesty, could in any way be impugned throughout this entire record, had this to say—bear with me a moment please. I would like to read it directly from the record. On page 238 of the record, lines 9 and 10, Judge O'Hara had this to say:

> "... I would have to go chasing around and into the District Attorney's Office and the City records and everything else, and it was a question of honesty and integrity of the District Attorney's Office, which I had [fol. 924] absolute confidence in, including Mr. Garrison's honesty and integrity."

There is absolutely nothing in this record which would indicate that Mr. Garrison had anything but the most lawful and laudable motives whatever in making this statement.

Now I would like to comment, if the Court please, on the rather anguished, self-righteous cries which we heard from some of the witnesses in this case, and, of course, I don't think that that should have anything to do with whether Mr. Garrison is guilty or innocent in this case whatever, but let me say this: That I believe what happened in this case is that these Judges decided to stop this vice investigation without any idea that a district attorney would have the courage to bring their actions to the public. I think that they were surprised, they were chagrined, they were shocked to know that the District Attorney would bring that to the public, because they have always felt that as Judges they have a position of immu-

nity in the community, and they are rarely, if ever, criticized by anyone. Particularly are they never criticized by the District Attorney.

The Court: You are referring to the Judges of New Orleans, are you not? (Laughter)

Mr. Organ: Those are the only Judges I know, if the Court please.

And while all of them have testified that they feel [fol. 925] they have been severely injured in this case, we don't think that there is any substantial evidence of any injury whatever. We believe that the public has every right to decide whether Mr. Garrison was correct. Mr. Garrison made the statement that the public—that he had stopped the vice investigation, and that raised questions as far as he was concerned, and the public has a right to decide whether it raises questions or not. The public has a right to decide whether stopping these vice funds indicates that there is racketeering influence on them. Mr. Garrison was not trying to implant his comments, his ideas, on the minds of the public when he made his statement. They have a right to decide, and he brought out the facts. He brought out the true facts, the fact that they had stopped the money for his vice investigation, and we have yet to hear one single one of those Judges state, I went to Jim Garrison and told him, Jim, we cannot authorize vice investigation because you are not supposed to investigate them. We cannot authorize vice investigation because it is unconstitutional. Not one single one of them did that. They called him into a meeting after the meeting was already had, after they had already made their decision, and said, This is it, this is what you take with you, this is what you have got to live with. And we believe under the circumstances in this case, if Your Honor please, and under the law applicable to this case, it clearly supports the fact that Jim [fol. 926] Garrison is guilty of no crime whatever. He is guilty of one thing and one thing only, and that is of running a good District Attorney's Office and being a good District Attorney. If in this case Mr. Garrison is prevented from making public statements as he has in this case,

under the circumstances which are prevailing in this case, then we think that freedom of speech is walking a very dangerous and narrow path.

REBUTTAL BY THE PLAINTIFF

Mr. Gremillion: May it please the Court, I was impressed by Mr. Organ's argument as one of guilty with mitigation of punishment, because he admits that the statements were made, he admits that they were made by the District Attorney, and throughout his argument he was relating the circumstances surrounding the issuing of it with, of course, in my opinion, just the fact that he had a right to do it, but that is not so. As a judge told me one day, "Sure, the world admires a fighter, but fight according to the rules," and the Defendant in this case went beyond the rules and defamed eight Judges of this District Court. The fact that the Fines and Forfeitures account was tied up, as the Defendant claims it was, and that they prevented vice investigation, which was his campaign pledge and so forth, that is not supported by the record, Your Honor, and that is not so. We proved by Mr. Dempsey, one of the reporters that I referred to, that he thought that there should be—Mr. Garrison thought that there should be some revamping of the [fol. 927] system; in order to protect the integrity of the D.A.'s office, he was going to make a loan and pay these accounts. He knew that he wasn't being stopped. He knew himself that there should be a better system to it, so this business about other district attorneys having a free rein, that is immaterial, that is irrelevant to what actually happened in this particular case. Judge Brahney got on that witness stand and testified he signed some of those for him for vice investigation. Others of the Judges said they would do the same thing if he would tell them where it was going, who it was going to. One of them, Judge Haggerty, said they ought to mark their money so they could get it back, which they have got a right to do, but above and beyond all that, the law is that the District Attorney is not a detective.

The Supreme Court has said in the Marrero Case time and time again that the law in the City of New Orleans under its Home Rule Charter says there will be one police force. We put Superintendent Giarrusso on the witness stand, who testified that he had policemen on top of policemen running out of his ears to do anything that he wanted. He certainly could have put those policemen to work on vice investigation if he had wanted to. This was done with Superintendent Giarrusso's consent and Mr. Garrison picked those men out himself, so he could have gone that route, he wasn't tied up there.

[fol. 928] As District Attorney, he could have gone the route of an open hearing. He has got the grand jury, he had all types of activities at his disposal, so that the fact or the alleged fact that they tied up his Fines and Forfeitures account is actually erroneous and is not borne out in this particular record.

Mr. Organ: If Your Honor please, I am going to object. The record does not show that Mr. Garrison was not using the policemen in his office for these investigations.

The Court: I don't think that is in the record. Mr. Gremillion.

Mr. Gremillion: What I am referring to, Your Honor—maybe the Court or Mr. Organ didn't quite understand me—what I am saying is that he never did say the policemen were stopped, because I particularly asked that of Mr. Giarrusso. I asked him if—and you remember we had quite a bit of exchange over it—I asked had the activities of these men, who had been assigned by him to the District Attorney's Office, had their activities been hampered by the action of the Judges, and he said as far as he knew, no. That is what I am referring to.

The Court: All right.

Mr. Gremillion: I am referring to the fact that he still had people available on the City payroll to investigate anything he wanted, and there were 11 there, and I am [fol. 929] quoting that to show that the allegation or the claimed allegation by the Defendant that the Judges had tied his funds is false.

Now I also point this out to the Court: That the Fines and Forfeitures Fund is not a vice fund, it is not ear-

marked as a vice fund. I don't know really what it is for, but I do know that the Statute sets out a procedure where he has got to file a notice with the City and then he has got to file a motion with the Court, set out what the expense is for, and then it says "subject to the approval of one of the Judges of the Criminal District Court."

Mr. Organ: Well, Your Honor,—

Mr. Gremillion: Just a minute, Mr. Organ. I didn't interrupt you at all.

The Court: Let him finish his statement and then you can object.

Mr. Organ: All right.

The Court: Have you finished your statement?

Mr. Gremillion: Yes, I have.

Mr. Organ: If Your Honor please, there is not one iota of evidence that they turned down the vice investigation money on the ground that he wasn't following any procedure set out in the statute. We object to that as being prejudicial.

The Court: Of course, as I appreciate it, there were 12 policemen that were assigned to his office that were [fol. 930] working in plainclothes. It would be up to the Court to interpret the provisions of the statute, which I intend to do, the statutory law.

Mr. Organ: Also, if Your Honor please, there is no evidence he was seeking this vice money for salaries. This vice money was being used, as evidenced, in the expenses and operation, not salaries at all. The evidence is to the contrary.

The Court: I believe these men were being paid by the City itself and assigned temporarily to them. I believe that is what the record shows. Go ahead, Mr. Gremillion.

Mr. Gremillion: If Your Honor please, there is absolutely nothing in the record to show where this money was being spent, whether it was being marked, or whether it was being recovered, no evidence in the record to that effect, and that is one of the reasons why the Judges took their action, and that, of course, is brought out by uncontradicted testimony of the eight Judges who were witnesses in this particular case.

Now, if Your Honor please, I imagine that we could argue here all day long back and forth, but we must be bound by what is in that particular record. I repeat that there has not been established—that there is nothing in the record to establish that he had any privilege of any kind, but that, even if he had such a privilege to make these [fol. 931] statements, that the extrinsic evidence indicates that he wanted to bring this out to the people because, as Mr. Reed testified, the only way that he could put those eight sacred cows back to work was to expose them to the public, and that, of course, right there indicates malice in itself. If they were guilty, why couldn't he have filed a malfeasance charge or had them brought up before the Grand Jury? There were ample moral ways that it could have been handled. It wasn't necessary to defame these people.

The malice is also proved by the continued assertions that he made. Let me read you from the record, Mrs. Shean's report of his talk concerning the money:

> "... This money has to be spent by December 31st or we have to give some of it to the City."

Now this is Mr. Garrison speaking to the group at St. Anthony's Catholic Church.

> "So we have gotten $60,000.00, and I conclude that this is the time to get the equipment we need, and that is what we have been doing, so if you have anybody say that we are throwing money away, this is not true. This has to be spent. The law encourages the District Attorney to spend it so it wouldn't be [fol. 932] built up. We have about $40,000.00, and what we don't spend will have to be given away. That is when the beginning of this conflict came, when our investigations were stopped, and stopped they were, by the Judges. Anyway, I pointed that out, I said that when in the midst of an operation the Judges cut off my funds, it raised these interesting questions about racketeering influence. If you can think of any other question it raises, I would like to know. It is true questions of influence were used. I would

> be standing up and telling the people of New Orleans every time I encounter trouble like this from a public official. I have to because I have no organization to turn to, I have no allies, because the other officials are the Association of Armed Robbers." *

Now what can be inferred from remarks of that kind made some 45 to 60 days after the original defamation, and besides to a church group?

Now, if Your Honor please, I submit, as I stated previously, that the State has proved every element of this [fol. 933] offense. The Defendant says that he was privileged to make these statements under Revised Statutes 14:49, but an analysis of his argument reveals that it amounts to a contention that just because he was the District Attorney, he was privileged to say anything he pleased about the Judges because they were public officials.

Now that is erroneous. The privilege of comment on public officials is qualified by the requirement that the comment must be based on a reasonable belief of the truth of the statement. It must be fair comment. It must be made in good faith. It must be justified. None of that is in the record, that it was justified, that it was in good faith, or that it was a fair comment.

Privilege is a defense to the crime of defamation, and it was for the Defendant to establish that it existed. The Court so held in *State* v. *Lambert*.

There is nothing in the record to prove that the privilege existed. It was incumbent upon him to prove that when he made the statement on November 2, 1962 that he had reasonable grounds to believe that the eight Criminal Court Judges were each and every one of them motivated by racketeering influences in their refusal to approve certain expenditures from the Fines and Fees Fund.

There is nothing in this record to show that at the time of making the statement, Defendant reasonably believed [fol. 934] that these eight Judges were motivated by racketeer influences or sympathetic to racketeers.

---

* Transcribed as read without reference to the document quoted.

To show such a reasonable belief, the Defendant would have to show facts which would lead a reasonable mind to conclude that there was a racketeer influence and his knowledge of such facts at the time that he made the statement, the Defendant's knowledge of the facts, cannot be presumed. There is no proof to show the reasonable belief or the knowledge of the fact at the time he made the statement. There is no proof in the record.

Now let me say this, that the only thing left for the defense is that he claims cross-examination of the Judges brought out evidence that some of them had paroled gamblers and that two of them had attended a party with a gambler. Such evidence is not a reasonable ground for the inference of racketeer influence.

Mr. Organ: If Your Honor please, that is going beyond our argument. We object to it. This is rebuttal. He is strictly limited to answering arguments.

The Court: It is a matter for the Court to arrive at some deductions from the weight of the evidence.

Mr. Gremillion: Well, if Your Honor please, his argument covered the statement and how it was made and the surrounding circumstances and so forth, and I am commenting about the record and the same thing, the truth of it.

[fol. 935] The Court: That is all right. Go ahead. Don't cover anything that wasn't covered on Mr. Organ's argument. He would have no chance to reply now to it.

Mr. Gremillion: I am not trying to take advantage.

The Court: I understand that. I am sure you haven't.

Mr. Gremillion: Well, anyway I say in conclusion that there is nothing in this record to show any reasonable basis or justification for the defendant's statement, as required by law, and privilege does not exist.

If Your Honor please, I submit the matter, and I ask for a verdict of Guilty as Charged.

The Court: I will say this, gentlemen, that I have, of course, listened to the trial of this case, and I have had occasion to read the record through again I have tried to follow—study rather—the Memorandum of Authorities furnished by the Defendant and also to study the legal principles that he has raised in his suggested charges. I

have also had occasion to consider those briefs and Memorandum of Authorities on behalf of the State. It will be submitted to me for a decision, and I will say at this time that it will be my purpose to try to take all of that, the record and all of that, as part of the record that I haven't read with reference to some of the articles; and take all of the record and take the arguments of counsel, and I will [fol. 936] want to perhaps—I don't know that I will render a written opinion, but certainly I want to get my thoughts together on it, and I will probably work on that this afternoon and tomorrow and will try to hand down a decision in this case on Wednesday morning at 10:00 o'clock. Will Counsel be here at that time.

The Court will recess until that time.

(Thereupon, at 11:35 o'clock a.m., proceedings in the above-entitled matter were adjourned to Wednesday, February 6, 1963 at 10:00 o'clock a.m.)

[fol. 938] (Pursuant to the adjournment of February 4, 1963, the proceedings in the above-entitled and -numbered cause were resumed on Wednesday, February 6, 1963; at 10:00 o'clock a.m., appearances being the same as heretofore noted in the record.)

The Court: Are you ready to proceed, gentlemen?

Mr. Gremillion: Yes, Judge.

The Court: Are you ready to hear the judgment of the Court?

Mr. Organ: Yes, the Defendant is ready, if the Court please.

The Court: The question arises that my opinions are not going to be completely written, but will be partially oral. I don't know whether you want—you have not made any request for written reasons. Of course, that request has to come before the first witness is sworn, under the law. I don't know whether there is any request that these, my statements being partly oral and partly written—whether there is any request for it to be taken down or not.

Mr. Organ: There is. We make that request at this time, if the Court please.

The Court: Well, I will state in connection with the request that no motion has been filed, as provided under the law, for written reasons, and, therefore, this opinion—is considered as an oral opinion from the bench—rather, [fol. 939] not an oral opinion, but a comment upon the Court's appreciation and deductions from the facts. If there should be any variance between any statement that the Court might make with reference to the facts and that embraced in the record, of course, the record would control, and I will state this also, that my reasons for judgment will be incorporated at the end of my opinion, but, in view of the fact that this case involved quite a bit of interest, that I feel that I should comment to some extent—rather, to a large extent—on my appreciation, my deductions, my summary of what the record might reveal.

I will state this further: that the reporter in this case, the firm, has done a masterful job under the extreme pressure of getting this evidence ready. However, there is no reporter—it is not known that any reporter could ever take exactly what has been said without the possibility of error so that, if there is anything in the reported comments that the Court considers is error, then the Court reserves the right to make that correction and the Court reserves also the right to make any further or additional comments other than those here, as it would see fit.

Before going into a discussion of the case, I would like to state that perhaps the record might reveal that the Court referred to its per curiam several times in the record [fol. 940] as I have seen it, and there are some corrections, gentlemen, that will have to be made in the record. For instance,—and I will, of course, order those corrections made where there is an error made—for instance, there is one where the word *action* was used when in reality the Court used the word *reaction* rather than *action*. So in referring to my per curiam, the question of the *per curiam*, throughout the trial of the case, I want to qualify that to the extent that I intended, and if there be—there was no pre-judging of the case, but if there were intended to be reserved a bill of exception at any time during the trial of the case, my per curiam would further amplify my reasons.

I would like to make this further observation: that throughout the record there is an off-the-record discussion at times by the Court with Counsel for both sides. This case has been recorded at quite some expense to the Parish or to the Fines and Forfeitures Fund, and where a case is tried by a judge, oftentimes he likes to discuss a principle of law with the counsel. It is to the benefit of the Court, it is to the benefit of Counsel for both sides, that we understand exactly what is being discussed. So where a case is tried by a jury, sometimes we send the jury out and discuss it; in a case tried by a judge alone, I would have had to adjourn or recess court and repair to my chambers with Counsel and discuss it there. Rather than take the time, [fol. 941] that amount of time, to go through that process, which would disturb Counsel and disturb the Court in its thinking as the trial progressed, there was a discussion from time to time off the record rather than recessing to my chambers for the purpose of threshing it out. I think there were off-the-record discussions which assisted all of us, Counsel and the Court also, in understanding—for better understanding, rather than to clutter up the record at an expense to the Parish on matters which perhaps were not relevant and which was nothing more than a free discussion.

I wanted to make these observations before I go into the decision of the case.

OPINION—February 6, 1963

As was generally known, I have been called upon to try and decide this case under appointment by the Supreme Court of the State of Louisiana. As I stated when I first appeared in this case, I am not here of my own volition, but rather as a duty, to hear and decide the issues of this case under my oath of office as a District Judge of the State of Louisiana. I am sure that there is no one that would envy me my position in this matter. As I stated at the beginning of this trial that I would try this case as expeditiously and as judiciously as possible and would seek to arrive at a fair, just, and impartial verdict. I have heard the evidence in this case, and since the trial I have had occasion to [fol. 942] read the evidence carefully. I have devoted many

hours of study to the legal principles that are involved in connection with the evidence, have heard the oral arguments, and am now ready to render a decision in the matter, which I believe to be the only decision that I could conscientiously reach, giving a thorough consideration to the evidence adduced from the witness stand, or want of evidence and the legal principles involved. That is my duty under the law, to so decide fairly and impartially from this standpoint, and from this alone, disregarding all else.

In a consideration of this case, it will be my duty to treat it as any other case, regardless of the parties or the issues involved. In so doing, it becomes necessary for me to make comments upon certain facts and certain principles of law, and I would like for it to be understood that in so doing I am making those statements impersonally and dispassionately, without any intention of doing any injury to any of the witnesses or the Defendant.

In discussing the facts and the application of the law, the Court must necessarily give its interpretation of its appreciation of the facts and the law. Therefore, I trust that anything that I may say will be taken in that light, and not as a criticism of any of the witnesses, who may have appeared in this case, or of officials or of the Defendant.

[fol. 943] It will be my purpose at this time to give my impression of the highlights of the testimony that would be material, relevant, and would assist the Court in the correct determination of the issues involved.

There is in the record the testimony of several reporters for the New Orleans newspapers, TV stations, and so forth, who testified in this case, particularly with reference to what was said by the Defendant herein at the time of the making of the statement which the State alleges is defamatory. Also in the record is the testimony of several reporters as to what was said subsequent thereto as well as other statements made on November 2, 1962, which was the day on which the alleged defamatory statement was given to the press. Most of what was said would not be material in the determination of the issues, but some of it is material to determine the state of mind of the Defendant at that time and the question of actual malice.

On the date of the alleged defamatory statement, Mr. Garrison came into the courthouse, as I appreciate it, with Pershing Gervais, and learned that there had been an en banc meeting of the Judges. He was interrogated by Mr. Bert Hyde, reporter, as to whether or not he desired to make a statement, and later on, in the presence of Mr. Gervais and others, he issued the statement which the State [fol. 944] alleges to be defamatory. Also, in a statement to Mr. R. J. Dempsey of the New Orleans States-Item, the Defendant made the statement that he was going to bring these racketeering influences on the Judges before the Grand Jury. However, this was never done, according to the evidence.

Also on the same date of November 2, 1962, on which the alleged defamatory statement was made, Mr. Bill Reed, News Director for WWL-TV, I believe, interviewed Mr. Garrison—on the date of the alleged defamatory statement as well as on other dates—and the statement was made by the Defendant to Mr. Reed and subsequently made public. Mr. Reed testified, when questioned about the responsibility of fixing cases for trial, that Mr. Garrison made the statement, "To be charitable, I would call it a lie," referring to the Judges fixing the responsibility on him. Further on that date when it was called to his attention that the Judges had pointed out that they thought it would have been much better had Mr. Garrison met with them, his reply was, "They know, I believe, perfectly well it would have been a waste of time, that the only way to get these sacred cows back to work is by public reaction." Also, when questioned about the number of days vacation per year taken by the Judges, Defendant referred to it in the following language: "The only way to refer to it is as a racket," [fol. 945] and that the only way the public would find out about it was for him to bring it to public notice. He further testified that he did not notice anything antagonistic by the Defendant, but that the Defendant at that time did not appear to be calm. Of course, the alleged defamatory statement is in the record, that was given to the press, and there is no reason to comment upon it until later in this opinion. It is not denied that it was given and published and given wide circulation.

It might also be noticed here that some of the statements made at different times were objected to by the Defendant for the reason that they were not admissible. They were admitted by the Court for, and restricted to, the purpose of showing actual malice. However, there was admitted into the record, by agreement of Counsel, and so stipulated, a copy of a speech made by the Defendant at the St. Anthony Auditorium in New Orleans on December 5, 1962. This speech was taken verbatim by Mrs. Theresa E. Shean, an official court reporter, and at the request of Counsel for the Defendant, it was read into the record.

In this speech, Mr. Garrison defends his position under the doctrine and right of freedom of speech. He points out the crowded conditions of the Parish Prison, that the Judges were derelict in taking too many holidays, or words to that effect. He makes the following statement:

[fol. 946] "I will be standing up and telling the people of New Orleans every time I encounter trouble like this from a public official. I have to because I have no organization to turn to. I have no allies because the other officials are the 'association of armed robbers.'"

He also referred to the expenditure of funds, which will be hereinafter discussed in connection with the discussion of the law and the provisions of LSA-R.S. 15:571.11.

There were other parties and reporters who testified in this case, but I can see that no useful purpose could be served in exhaustively reviewing this line of testimony further.

As a matter of testimony, there is the evidence in the record of the eight Criminal District Court Judges alleged to have been defamed, as well as the testimony of Judge William J. O'Hara, retired.

The record herein is voluminous, and it would not be feasible or expedient to try to explain everything that each witness might have said. Rather it will be treated as a whole.

It will be my purpose at this time to comment only as to the highlights of the testimony of each of the Judges of the

[fol. 947] Criminal District Court, who testified in this case, in the order of their appearance on the witness stand.

Judge Malcolm V. O'Hara testified that the statements made in the alleged defamatory article were not true, that he had never told the District Attorney how to run his office or sent him any messages. He also testified that the District Attorney handles the setting of cases. Testifying further, he says that the alleged defamatory statement had subjected him to cumulated ridicule. He did not blame the crowded conditions of the Parish Prison on the Court, as a fault of the Court or of the District Attorney, testifying that the building housing the prisoners was built 35 years ago for a certain number of people, and populationwise it was now causing the crowded conditions. He further testified that a large majority of the people of New Orleans wanted vice cleaned up and that there were very few holding contrary views. He also testified that he took office in September and had jury cases in November and December of 1962 and in January of 1963, and disposed of 150 cases. He further testified that he supported Mr. Garrison for the office of District Attorney, which he now holds.

The next witness on the stand was Judge William J. O'Hara, now retired after serving as Judge of the Criminal [fol. 948] District Court for approximately 30 years. As I appreciate his evidence, the difficulty that triggered the differences between the District Attorney and the Judges arose by reason of an application of the District Attorney for approval of a bill for something like $985.00 for drapes and carpets for the District Attorney's office. Judge O'Hara asked for proof of the value of the expenditures requested in the motion by the District Attorney, which he says Mr. Garrison agreed to get for him. This was never furnished. Judge O'Hara went on vacation, and when he returned, he understood that Judge Wimberly had signed the motion. I gather from the evidence that, although Judge O'Hara had never promised to sign the order, that the District Attorney represented to Judge Wimberly that he had done so, and when Judge O'Hara returned from vacation, Judge Wimberly had signed the order. It was then that the Judges invoked a rule at an en banc session to require that all

motions for expenditures out of the Fines and Forfeitures must be signed by five out of the eight judges; three on emergency matters. He further testified that he knows of no racketeering influence on him and that no messages or directives were ever sent to the District Attorney by him on how to run his office; that there was no use of vacations as a racket, and that he strongly stands for the suppression [fol. 949] of vice in New Orleans. Further his testimony is to the effect that the crowded condition of the docket was due to the inadequacy of the District Attorney's office. I do not believe the import of this casts any reflection on the Defendant herein, for the reason that Judge O'Hara's testimony led me to believe that he intended to say that the system employed resulted in the backlog of cases, rather than who was the District Attorney, citing the fact that during the administration of Mr. Hubert as District Attorney, there was a different system used in processing the cases when they first came into the office and later, which resulted in a clean-up of the docket. However, Mr. Hubert's successor had resorted to the old system, which is still used by the Defendant, and this resulted in the backlog of cases. Judge O'Hara also testified that the statement of the District Attorney with reference to racketeering influences was also false.

It might be further noted that Judge O'Hara was very complimentary to the Defendant as District Attorney as to the clean-up on vice, saying, "Now, I am not saying that Mr. Garrison did not do a very good job on Bourbon Street. He did a very good job . . ." However, he disagreed with the authority of the Defendant to pursue the investigation in the manner he was using, as being in conflict with the provisions of Section 16 of Act 301 of the Legislature of 1946, providing for police powers in the City of New [fol. 950] Orleans. He further testified that if there was any segment of the population of New Orleans in favor of B-drinking and prostitution and so forth, it was only an insignificant fraction, and that this segment had never made any effort to pressure the judges.

The next witness for the State was Judge Shirley Wimberly, who testified that the statement published on

November 2, 1962, by Mr. Garrison, which is the alleged defamatory statement, was not true; that he had never sent the District Attorney any statements or directives on how to run his office and he was never influenced by racketeering influences. He further testified that he signed the disputed motion for the Defendant with assurance from the Defendant that Judge O'Hara had agreed to it. Later he learned that he, Judge O'Hara, did not, and Defendant admitted that to the Judges in the en banc session.

I will interpolate here that Judge O'Hara might have agreed to sign it in reference to, qualified to, the supporting vouchers and so forth, but would not sign it without it.

This led to the invoking of the so-called five-out-of-eight rule, which meant that five of the eight Judges of the Criminal District Court would have to sign any motion for approval of funds for Defendant Garrison, three on the question of emergencies. He also questioned the validity [fol. 951] of the investigations in the manner performed as being contrary to the provisions of Section 16, Act 301 of 1946, as to the police powers of the City of New Orleans. His testimony also sets forth that from May 7 to September 10 there were approved for the Defendant some 73 motions, totalling $19,284.56 in expenditures. On October 26, 1962, the Judges approved 80 items, totalling $10,276.32, and since October 26, 1962, the Judges have approved 32 motions amounting to $17,742.35, making a total amount of claims approved since May 7, 1962, of $47,303.23 for expenditures out of the funds for Fines and Forfeitures. I believe there was a claim—I don't remember exactly how much it was but it was somewhere in the neighborhood of $1,500.00—for undercover work that has not been approved, as he considered that Act 301 of 1946 prohibits anyone except the City Police of the City of New Orleans from exercising police powers within the City, and for other reasons. He further showed that in the items that were approved for Defendant Garrison, that the District Attorney's Office had purchased 12 chairs for the sum of $100.00 each, that he had purchased a microscope for $689.59, a camera for $157.00, two flags for $92.48, two plastic plants for $233.30, carpet for $231.75, a sofa for $199.00, and an overstuffed chair for $100.00.

The next witness called by the State was Judge Oliver [fol. 952] P. Schulingkamp. The highlights of Judge Schulingkamp's testimony are that the alleged defamatory article of November 2, 1962, by Mr. Garrison, was not true; that he was never under the influence of any racketeering influences and never sent any messages to the Defendant on how to conduct his office. He further testified that the District Attorney sets the docket in different sections of the Court and that no complaints were made by the District Attorney about the assignment of cases. He further testified that it was his opinion that under the provisions of Act 301 of 1946, it is the law that only the Police could exercise police powers in New Orleans.

The next witness called by the State was Judge Edward A. Haggerty, Jr., who was one of the judges of the Criminal District Court. My appreciation of his testimony was that the alleged defamatory statement of November 2, 1962, by the Defendant was false; that he had never been influenced by racketeers and had never sent any messages or directives to the District Attorney on how to operate his office; further that the cases are assigned by the District Attorney for trial; further that in the campaign in which the Defendant, Mr. Garrison, had defeated Mr. Dowling for District Attorney, Mr. Garrison in his campaign speeches had particularly raised the question about the use of the funds authorized under the statute by the Dowling [fol. 953] Administration, and that this was one of the main issues in the Dowling campaign. Further his testimony is that this raised a so-called red flag to the Judges and caused them to examine and consider the expenditures more carefully. Further his testimony is that he did not believe the statute authorizing the use of the funds in the manner used by the Defendant was constitutional and questioned the authority of the District Attorney to exercise police powers in the City of New Orleans in conflict with Act of the Legislature 301, 1946. He admitted that he had attended the party at which Mike Callia, who had been convicted of a crime, was host, but that, as Assistant District Attorney, he was the one who had prosecuted Mike Callia and that Judge Cocke was the one who had sentenced him

to one year in the Parish Prison. His testimony further reveals that he voted for the Defendant for District Attorney, for the office which he now holds.

I might digress and say here that it is not the purpose of the law particularly to unduly punish a person as a criminal or to seek revenge for any infraction of the laws, but rather that the laws should be used as a deterrent to the party punished and others. The purpose of our laws is rather to seek to rehabilitate one who has paid his debt to society and seek to restore him to a responsible position of citizenship. It is not the American way of life to look [fol. 954] down upon one who has been convicted of a minor crime, or, to use an ordinary expression, to kick him when he is down, but rather to seek to extend to him a helping hand when seeking to restore him to his rightful place in society. I am sure that we all have friends who have made errors in their way of life and might have been convicted of a minor crime.

The next witness called by the State was Judge Bernard J. Bagert, who testified that the jury trial days that were requested by the Defendant in his section were on Monday, Wednesday, and Thursday; further, that the statements made by the Defendant in the alleged defamatory statement on November 2, 1962, were untrue and false; that he worked practically every day, that he was not influenced by any racketeers, and that he never told the District Attorney how to run his office or sent him any messages on it; further, that he had done nothing to block or restrict the District Attorney in his efforts to suppress vice. He was further of the opinion that the statute on fines and forfeitures is unconstitutional and in conflict with Act 301 of 1946. However, he said that he would sign investigative warrants until the act was declared unconstitutional.

The next witness called by the State was Judge George P. Platt. Judge Platt testified that he was elected Judge of [fol. 955] the City Court in 1920, in which capacity he served until 1936, when he was elected Judge of the Criminal District Court, and that he has served continuously as such since that time. He testified that the alleged defamatory statement of November 2, 1962, by Mr. Garrision was

absolutely false, that he had never been influenced by racketeers.

Judge Platt presented to the Court at the conclusion of his testimony a silver scroll that was presented to him on January 28, 1954, by the New Orleans Bar Association, which stated:

> "Presented to the Honorable George P. Platt in recognition of distinguished and loyal service on the bench, by the New Orleans Bar Association."

The next witness called by the State was Judge Thomas M. Braheny, Jr., who testified that the alleged defamatory statement made by the Defendant on November 2, 1962, as published, was false; that he had never been influenced by racketeers; that he was not in favor of racketeers and never attempted to block any effort to suppress vice; that he was also of the opinion that the Act of 1960, which took the money from the General Fund of the City of New Orleans and put it into the funds of the District Attorney, was a violation of the Home Rule Charter.

[fol. 956] The next witness called by the State was Judge J. Bernard Cocke, who testified that the alleged defamatory statement made by the Defendant on November 2, 1962, was false; that he had never been influenced by racketeers, nor was he sympathetic towards them; that he had never sent any messages to the District Attorney on how to run his office and had never sought to block the investigations; that although the law required only three jury terms per year, during his 18 years of service he had had eight jury terms a year; that he contributed to the campaign of Mr. Garrison and worked for him, but that he had lost confidence in him when he employed Mr. Pershing Gervais as an investigator, whom he branded a thief, a grafter, a professional informer, and an habitue of the places in the Quarter which he denounced. Under cross-examination, Judge Cocke admitted that in previous political campaigns very serious accusations had been made against him, which accused him of various and sundry acts of dishonorable conduct, but he had won his election by an overwhelming majority, proving that the people of New Orleans did not believe these accusations.

The next witness introduced by the State was Joseph I. Giarrusso, who is Superintendent of the New Orleans Police Department. He testified that 12 policemen had been assigned to the office of the District Attorney to work out of uniform; that the District Attorney selected these [fol. 957] men, who were paid by the City, and that they were good men; that the District Attorney had not had a meeting with the other police officers of the City of New Orleans.

This has been a tedious summation of my appreciation and deduction of the highlights of the testimony of some of the respective witnesses on behalf of the State on matters that I consider pertinent.

Further adding to the testimony, it will be noted that all of the judges that were questioned about it, testified that the alleged defamatory statement by the Defendant in November, 1962, had subjected them to contempt, hatred, and ridicule, and, in addition to the above, the Judges were forcefully and searchingly questioned by Counsel for the Defendant on cross-examination as to any connections that they might have with parties who had previously been tried for violation of the law, particularly with reference to releases on parole prior to making bond. Most, if not all, of the Judges admitted that they had paroled certain persons charged with crimes under the provisions of LSA-R.S., Title 15, Section 78, which they had a right to do. I believe from the evidence that in many of the cases the paroles were granted to respectable lawyers, who had guaranteed the appearance of those charged with a crime, in court for the purpose of making bond or trial, and to others whom the Judges in their judgment felt would be respon- [fol. 958] sible persons even though the proof indicates that some of them have been convicted of crimes before.

Although there have been many witnesses summoned on behalf of the Defense, none of them were called to refute this evidence or prove the truth of the accusations made in the alleged defamatory statement. Article 19, Section 9, of the Constitution of the State of Louisiana provides that in all proceedings or indictments for libel, the truth thereof may be given in evidence. Therefore, the only evidence before this Court that was adduced from the witness stand

is that introduced by the State, the highlights of which have been heretofore reflected.

As I appreciate and deduce from the evidence of this case, the Defendant in his campaign for District Attorney against Mr. Dowling had raised the issue of illegal use or misuse or extravagant use of funds. It appears from the evidence that the Judges, during Mr. Dowling's regime and previously, had not questioned these expenditures of the District Attorney very closely.

On cross-examination, Counsel for the Defendant in this case introduced several items which appeared to be rather expensive and extravagant expenditures during the previous administration. That was a matter within the discretion of the judges who signed the motion. It is not for me to comment on this action as the circumstances surrounding [fol. 959] those are not before me. However, the dispute as to these expenditures during the Defendant's administration arose by reason of the fact that some of the Judges considered them as extravagant and excessive amounts being expended without supporting proof. This matter finally came to a head by one item which the Defendant had sought to have approved by a motion, which I believe was drapes and carpets for his office. This expenditure was sought under the provisions of L.S.A.-R.S. 15:571.11, which provides as follows:

> "That all fines and forfeitures imposed in criminal cases—

this is a portion that applies to the Defendant in this case—

> "* * * all fines and forfeitures imposed in criminal cases and prosecution by the Courts of Orleans Parish shall, upon collection, be paid to the District Attorney of Orleans Parish, who shall deposit same in a special account to be used in defraying the expenses of the Criminal Courts of the Parish, extradition, and such other expenses pertaining to the operation of the Crim- [fol. 960] inal Courts of Orleans Parish and the office of the District Attorney of Orleans Parish as in his discretion may be necessary. Provided that any sur-

plus remaining in said special account or fund on December 31 of each and every year shall be distributed as follows: One-half to be retained by the District Attorney of Orleans Parish to be used as hereinabove set forth, and the other half to be remitted to the City of New Orleans. No money shall be paid out of this fund except upon motion by the District Attorney of Orleans Parish and approval by a judge of the Criminal District Court of Orleans Parish. A copy of said motion must be served on the budget officer of the City of New Orleans 24 hours prior to approval thereof by the Judge. Said fund shall be annually audited by the Director of Finance of the City of New Orleans. • • • "

And then it recites the amendatory acts.

It will be seen by reading the provisions of this law that it pertains to the operation of the criminal courts and the [fol. 961] office of the District Attorney of Orleans Parish, and it provides for the expenditure of funds for the operation of the criminal courts of Orleans Parish and the office of the District Attorney of Orleans Parish which, in his discretion, may be necessary. However, since the Judges of the Court have been approving these items, I do not see that I should comment on it, for the reason that it addresses itself to their discretion and their interpretation. The Act, however, provides that the motion should be approved by a judge of the Criminal District Court of Orleans Parish. Therefore, I believe the intendment of the Legislature in this matter was that a check be placed on the spending of this fund by requiring this to be done just as ordinary business vouchers or any other instrument might have to be signed by one person but is necessary to be countersigned by another to be valid. I can see that the Judges might have been provoked when the dispute arose in reference to the signing of the order which precipitated the controversy and the five-out-of-eight rule was adopted and invoked. However, I can also see that the District Attorney could be provoked by the establishment of such a rule as the statute did not require five of the Judges to sign the order, although they might agree that no one judge would

sign the motion unless five did so. This could have pro-
[fol. 962] voked the Defendant such as would give rise to a thought in his mind that he was being discriminated against. In other words, I can also imagine a situation where there might be four of the judges who would agree to—off the cuff agree to sign a motion and there would be four who would disapprove. Therefore, this would lead to a state where the District Attorney could not get his motion approved, although there might be four judges who would be willing to approve it. I do not believe that the Legislature contemplated this: It would also place an additional burden and hardship on him in having to go to five different judges to get the signatures whereas the Act only provides that it is necessary to have the signature of one judge. However, this would be subject to the discretion of the judge in approving the motion, and if, in fact, the District Attorney might have been provoked by this action, a relief in law was available to him to apply for a writ of mandamus by appropriate proceedings in a proper court. This remedy, in my opinion, the District Attorney should have resorted to. I am satisfied that he could have settled the matter in a proper manner in the proper courts of this state. As a matter of observation, I will say that it is inadvisable at any time to make any statement if one is disturbed or excited or in anger or disappointed or under provocation. The Defendant should have resorted to the
[fol. 963] law, to the relief that the law granted him, and the matter would have been settled long before this one way or the other without the necessity of this trial. Also, if he reasonably and honestly believed that the Judges were in fact influenced by racketeers or were subject to racketeering influences or guilty of any misconduct, there were several remedies under the law that were available to him to rectify this.

While on this question of expenditure of these funds and the construction of this statute, in the speech delivered on December 5, 1962, by the Defendant at St. Anthony's Auditorium, he made the statement about the fund from which he was expending, about the money that was secured from the fines and forfeitures, saying:

"In that regard, this is not tax money. We have reduced our budget from the City voluntarily. We sent money back to the City. Fines and fees come from the bonding companies and this is what we have improved our office with. Secondly, this money *has to be spent* by December 31st, or we have to give some of it to the City. So we have gotten $60,000.00 and I conclude that [fol. 964] this is the time to get the equipment that we need, and that's what we have been doing. So, if you hear anybody say that we are throwing money away, this is not true. This *has to be spent.* The law encourages the District Attorney to spend it so it won't be built up. We have about $40,000.00 and what we don't spend, will have to be given away. It's a practical matter. And my hands are still tied."

It is hard to envision the logic of this line of argument for the reason that one-half of the funds that would have been left at the end of the year would have gone to the City to be used for the benefit of the citizenry of New Orleans, and, as I view it, the statute was only to provide the District Attorney with funds necessary for the operation of his office officially.

As far as there is any evidence whatever before the Court, all of the Judges of the Criminal District Court when asked, who appeared in this case, have emphatically stated that the alleged defamatory statements were not true. All of them testified emphatically when asked that they had not been influenced in any respect by racketeers. All of them testified when asked that they had been sub-[fol. 965] jected to hatred, contempt, and ridicule because of the statement.

The evidence does not convince me that the Judges were vacation-minded or that they were not willing to work during the time that they were supposed to under the law. Of course, the law provides that Saturday and Sunday in Orleans Parish shall be legal holidays, or a portion thereof, together with other legal holidays, as set out in the statute. There is also provided in the Constitution a vacation period. Among the duties and powers as set forth under the provi-

sions of L.S.A.-R.S. 15:17, defining the duties of the District Attorney, the law provides in part, quoting only the first of it:

> "Subject to the supervision of the Attorney General, as hereinafter provided, the District Attorney shall have entire charge and control of every criminal prosecution instituted or pending in any parish wherein he is District Attorney, and shall determine whom, when, and how he shall prosecute."

This means that the District Attorney has complete control of the fixing of cases for trial and, as referred to in this trial, he is the "Master of the Docket" as to ordinary fixings. It is usually only where a defendant has demanded a speedy trial, to which he is entitled, and the District [fol. 966] Attorney refuses to fix it, that the Court may step in and order trial. Otherwise, the District Attorney, under this provision of the law, fixes the docket and assigns or asks that cases be assigned for trial. I do not believe the record shows that any judge at any time ever refused to fix a case for trial when so requested by the District Attorney, with the exception that Judge J. Bernard Cocke did not fix any cases for trial on Friday of each week. He assigns as his reason that that was the day each week that he used to research in the Law Library in the Supreme Court Building.

At this juncture, I would like to digress and state that a district judge must necessarily study cases and research the law in making his rulings and writing his per curiams on the various bills of exception and other matters connected with the trial of cases. It requires many more hours of work on his part in this connection than those actually spent sitting on the bench. As an illustration, I have been working many more hours on the study of this particular case than I have spent hearing it. Also, a judge is on call, you might say, practically 24 hours a day, as there are many times that persons are in trouble or authorization must be obtained from the judge to take appropriate action, such as the matter of bail and other matters that might arise. There are also many motions and other matters

[fol. 967] taken up in chambers by the judge, and the actual time spent on the bench is not necessarily the largest part of the work that he does. This is a fact that is often overlooked.

I think it is recognized that public officials may be criticized more severely than the average citizen, as by offering themselves for public service they could and should be subject to more criticism. However, this has it remedies if abused.

The right of free speech is a very noteworthy and sensible provision of the Constitution of the United States and of the Constitution of the State of Louisiana. I believe very firmly in this right, so long as it is not abused, and firmly defend it, so long as it does not encroach upon the rights of others as to the protection of their honesty, integrity, reputation, and good name, without just cause.

I might make the statement here that I made on the trial of the motion. I believe it is related in respect to Justice Oliver Wendell Holmes of the United States Supreme Court that, in discussing the question of freedom of speech, he made the statement that this does not go so far as to allow a person to shout "Fire" in a crowded theatre.

Legitimate criticism of public officials should never be abridged. However, I cannot subscribe to the theory that [fol. 968] all acts of public officials may be criticized in a defamatory manner with impunity and that the party defamed may not have adequate remedy under the law. A public official or any other person would then be placed in the position of first having to resort to resentment of the unjust criticism or defamation by resorting to physical violence, which would be abhorrent, or, secondly, if defamed publicly in the press, it would mean that he would have to conduct a running fight in the press in seeking to defend himself, or, thirdly, he must otherwise suffer in silence the opprobrium that would be attached to him as a result of the defamatory statement, and, if he does not defend himself, there would be many people who would accept the defamatory statement as true.

Therefore, our lawmakers have seen fit to incorporate in our statutes the right of redress for defamatory statements and a legal method to defend one's good name, honor,

integrity, and reputation, so that the right of free speech might not be carried to such an excessive extent that one defamed would not have any legal remedy.

Before passing to a discussion of the questions of law raised in this case, I might say that the evidence convinces me that the statement charged in the bill of information is a defamatory statement within the intendment of the [fol. 969] law as to defamation and false in its essential particulars.

The statement and the evidence convince me that it has exposed the Judges of the Criminal District Court to hatred, contempt, and ridicule in depriving them of the benefit of public confidence, of social intercourse, within the intendment of L.S.A.-R.S., Title 14, Section 47, et sequitur.

The Defendant in this case is pleading qualified privilege under the provisions of L.S.A.-R.S., Title 14, Section 49. The Court finds that if there exists a qualified privilege, then the State is required to prove that actual malice existed, whether the publication is true or false, if the publication or expression is a comment made in the reasonable belief of its truth, upon the conduct of a person in respect to public affairs.

Malice is defined in Black's Law Dictionary, in part, as:

> "The intentional doing of a wrongful act without just cause or excuse, with an intent to inflict an injury or under circumstances that the law will imply an evil intent."

It is further defined in Webster's Third New International Dictionary as:

> [fol. 970] "Intention or desire to harm another usually seriously through doing something unlawful or otherwise unjustified; revengeful or unfriendly feelings; ill will, enmity."

It has been defined in several jurisdictions as embracing spite and vindictiveness. (*Words and Phrases*, 26, p. 32). There are many other definitions of *malice* and *actual malice*, and the question of whether or not malice existed

will be proven or not proven by the facts in the individual cases.

The above-quoted provisions of L.S.A.-R.S. 14:47 et seq. are a result of the codification of the law which formerly covered oral and written defamation and has combined libel and slander in a single crime entitled "defamation."

Counsel for the Defendant very strongly objected to the admissibility of the statements made upon other occasions by the Defendant with reference to this particular defamatory statement. The Court believes that those statements were admissible for the reason that the question of actual malice is one about which the Defendant would know best—it is solely within his heart or mind—as to hatred, ill feeling, enmity, spite, vindictiveness, or a desire to injure another, and for other legal reason, as set forth in the provisions governing that in Title 14 of our Revised Statutes. [fol. 971] We cannot probe the mind or heart of the person to find these answers, other than by what they might do or say to evidence this. The best evidence of what might have existed could be shown by what might have been said or done with reference thereto, and, therefore, these statements were admissible for the purpose of showing malice only. They show the state of mind that the Defendant had on and from the date of the original defamation up to and including the date the last one was issued and convince me that it was a steadfast position of ill will and enmity arising out of a dislike of the fact that the Judges refused to sign certain motions for him. This right, to refuse to sign, the Judges had. The Judges had a right to refuse to sign for the reaso . that the Act placed upon them the responsibility of approving them and it was evidently a check on the validity of the accounts. Therefore, the District Judges had a certain responsibility in this matter to see that the supporting affidavits or vouchers or bills or proof were presented at the time they were requested to sign the motions.

Counsel has raised in his argument of Monday that the District Judges have never explained to the District Attorney why they did not approve his motions. However, the evidence does not reflect that the Defendant had ever made any effort to go to them and ask them for an explana-

[fol. 972] tion or sit down with them and try to work the matter out, and, while he was not required to do that, I think that would have been the proper thing to do. It is true that he attended an en banc session of the Judges and they discussed this matter, but I believe the evidence reflects that the rule was already in effect at the time he went in that afternoon.

There have arisen in this case several legal propositions which I will discuss in passing. Some of the Judges, complaining witnesses, take the position that L.S.A.-R.S.14:—I believe that is 15:571.11, as hereinabove quoted is unconstitutional as being in violation of the Home Rule Charter. I do not find it necessary for me to pass upon this question, because it cannot be raised collaterally and its constitutionality is not under attack, other than the statement of the witnesses as to what they believe. Also, I do not believe this was the motivating influence causing the Judges to adopt the rule that they did.

Also, the question has been raised in the testimony of some of the judges, who were witnesses on behalf of the State, that the District Attorney had no police powers or investigative powers in the manner in which he was conducting the investigation of this came under the provisions of Section 16, Act 301 of 1946, which provides—I will read a portion of that Act—as follows:

[fol. 973] "... there is hereby created and established, a Department of Police of the City of New Orleans, which shall be solely responsible for the discharge of all police functions herein granted in and for the City of New Orleans and the Parish of Orleans."

Then it refers to the places that they will inspect and police, including:

"... all houses of ill-fame or prostitution and houses where common prostitutes reside or resort; all lottery offices unauthorized by law, policy or bucket shops;"

and so forth.

The word *solely*, which is used at the beginning of this section, is defined by Webster's Third International Dictionary as meaning:

"Simply, alone; to the exclusion of alternate or competing things as persons, purposes, or duties."

For the same reasons assigned above, I do not think that it is necessary for me to pass upon this question as it is not an issue in this case of defamation and was not the [fol. 974] exerting influence for the imposition or invoking of the five-out-of-eight rule as to the approval of funds for expenditures under the Fines and Forfeitures Act hereinabove quoted.

I gather from the evidence that this action was based on the belief that the Defendant was being extravagant in the expenditure of funds, spending them excessively without supporting vouchers and affidavits or bills or showing of the necessity thereof. Also, it was brought about by reason of the fact that some of the Judges thought the District Attorney might have been playing one Judge against the other to get the bills approved. However, the sole question presented to this Court at this time is whether or not there has been sufficient proof under the law of the defamation of the eight Judges of the Criminal District Court of the Parish of Orleans, whether or not there is a qualified privilege, as pleaded by the Defendant, and, if so found, whether or not the State has proved actual malice such as would destroy qualified privilege.

The cases are legion in our jurisprudence with reference to criminal defamation and civil libel, with complete discussions of *privilege*. Some of the cases are on the question of civil libel, others on the question of criminal libel and defamation. Of course, there would be a difference in the [fol. 975] matter of proof in a civil libel and a criminal case, but the principle of law is practically the same or closely related.

Some of the more prominent and pertinent cases discussed are: *State* v. *O'Donnell*, 141 La. 887, 75 So. 811; *Stave* v. *Lambert*, 188 La. 968, 178 So. 508; *Deshotel* v. *Thistlewaite*, 240 La. 12, 121 So. 2d 222; *Kennedy* v. *Item Co., Inc.*, 213 La. 347, 34 So. 2d 886; *Madison* v. *Bolton*, 234 La. 997, 102 So. 2d 433; *Cadro* v. *Plaquemines Gazette*, 202 La. 1, 11 So 2d 10.

I do not see that any useful purpose could be served by a long discussion of the law and legal principles, because I am sure that all counsel for both sides, as well as I, have read these cases and are familiar with the principles of law. I have heretofore discussed most of them on preliminary motions to quash, etc., and in connection with the special charges that I gave, and I will have to discuss them again later on perhaps.

This brings us to a discussion of whether there was actual malice on the part of the Defendant in making the alleged defamatory statement on November 2, 1962. I am of the opinion that there was this malice intended at the time as a result of either anger, provocation, ill feeling, spite or enmity, by the requirement of the Judges in requiring the five signatures for the approval of his motions [fol. 976] for expenditures and failure to approve the motions for him without question.

As previously stated, under these circumstances, no one should speak or write until after calm deliberation and cool circumspection, which would lead to a reasonable statement.

I am further of the opinion that this malice existed at the time of the making of the statement and continued to exist.

After a careful review of the evidence and serious consideration of the law in this case, I am of the opinion that there was no qualified privilege under the provisions of L.S.A.-R.S., Title 14, Section 49, wherein it is provided that the publication, expression or comment is made in a reasonable belief of the truth of the conduct of the person in respect to public affairs. There are other provisions also in that same article, and it will be taken for the purposes of this opinion as being embraced in its entirety, L.S.A.-R.S., Title 14, Section 49, in the words as set forth in that.

The word *reasonable* is defined in Webster's Third New International Dictionary as:

> "(a) being in agreement with right thinking or right judgment: not conflicting with reason; not absurd; not [fol. 977] ridiculous. (b) Being or remaining within the bounds of reason; not extreme; not excessive."

The word *reasonable* is defined in Webster's Collegiate Dictionary as:

"(1) Having the faculty of reason; rational. (2) Just; fair-minded; not beyond the bounds of reason, logic."

Words and Phrases, Volume 36, gives us several definitions:

"To be consistent with that of the prudent man in like circumstances.

"It connotes action according to the dictates of reason —such as is just, fair, and suitable in the circumstances."

Again *Words and Phrases*, Volume 36, gives us:

"The expression 'honest belief' does not differ from the expression 'reasonable belief.' Both are used conjunctively and disjunctively by different courts.

"'Reasonable belief' * * * must be a belief begotten by attendant circumstances fairly creating it, and must be honestly entertained."

[fol. 978] Unquoting from any authorities, I might also observe that the word *reasonable* means just what it says: not a belief founded on caprice, fancy, conjecture, or speculation, but is such that an ordinarily prudent man might be able to assign a just and fair reason for.

After considering all of the evidence in this case, I can only conclude that the Defendant could not have reasonably had any honest or reasonable belief as to the truth of this statement. It is inconceivable to me that the Defendant could have had a reasonable belief, which could be defined as an honest belief, that not one but all eight of these Judges of the Criminal District Court were guilty of what he charged them with in the defamatory statement. These men have been honored by the citizens of Orleans Parish with very high offices, and some of them for a long number of years. It is inconceivable to me that all of them could have been guilty of all of the accusations made against them. Therefore, I do not believe that the qualified privi-

lege under L.S.A.-R.S., Title 14, Section 49, is applicable in this case, under this or any other part of this article.

However, were it conceded for the purposes of argument that he did have a reasonable belief as to the truth of the statement and his statement was entitled to be considered a qualified privilege, I am of the opinion that the State [fol. 979] has proved actual malice in its many definitions to destroy the qualified privilege under any provision of L.S.A.-R.S., Title 14, Section 49.

It, therefore, becomes my duty as a judge to apply these principles of law to the factual situation herein, and I am doing so under the painful realization of the import of my decision. If the Defendant District Attorney were engaged in a bona fide effort to suppress vice, gambling, prostitution, B-drinking, and other violations of the law in a legal manner, I think that he should be commended. I have never favored these violations of the law and consistently over the years that I have been on the bench I have charged the grand juries of the parishes of my District specifically on gambling and houses of ill-fame and have rigidly enforced these laws where there has been proven a transgression of them.

I do not find that there is any evidence in the record that any of the Judges who were defamed have expressed any desire to impede the District Attorney in the enforcement of these laws in order to favor these law violators. I believe that is well established by the record, by the testimony of the Judges of the Criminal District Court of Orleans Parish, that the overwhelming majority of the people of the Parish of Orleans are in favor of the suppres- [fol. 980] sion of vice, gambling, prostitution, B-drinking, operation of clip joints, and other illegal activities connected therewith. This sentiment is paramount among all of the citizenry of our State.

It is my studied and carefully considered opinion in this case that the Judges had no intention of impeding the suppression of vice, B-drinking, gambling, or prostitution, as such, but that the difficulty with the District Attorney arose by reason of the fact that they were of the opinion that the money was being extravagantly or excessively expended on other items without supporting affidavits, bills or vouchers.

or a proper showing. However, I believe the evidence reveals that there is approximately $1,500.00 in unpaid amounts which were supposed to have been expended in the suppression of vice, prostitution, B-drinking, and other illegal activities. The opinion of the witnesses was that the law did not permit this expenditure. The Legislature left to the discretion of the Judges the question of approving these bills. The Defendant has his own responsibility to the people and the Judges have theirs. Each should be allowed to exercise their judgment and discretion in the manner of his choice as to his duties, so long as it may be lawful.

I would like to also express at this time, and to particularly emphasize, that I deplore vice or corruption in any form, such as gambling, prostitution, B-drinking, clip [fol. 981] joints, or any other illegal activity. I stand steadfast for the strict enforcement of those laws, as these crimes should be suppressed wherever found, but I cannot say that one law might be violated to carry out the effect of other laws. All laws should be respected, not only by the average citizen, but particularly by officers who are charged with the duty of enforcing those laws. To say that one law might be violated in order to carry out the enforcement of another law is to compound a wrong, and two wrongs never make a right.

As I stated previously, I reserve the right to further comment, to make any further comment on this that I may deem necessary, on this proposition of law, but these will be taken as comments of my appreciation of the evidence, and insofar as they may be in accord with the evidence, they will be taken, and insofar as they may be in conflict with what the record reveals, the record, of course, will control as to the comments.

I now will assign as my reasons for judgment that it becomes my duty to determine whether or not the Defendant be guilty or not guilty. Under the facts and the law of this case, the evidence convinces me beyond a reasonable doubt that the Defendant in this case is guilty, and I so find him Guilty as Charged.

MOTION FOR A NEW TRIAL AND MOTION AND ARREST OF JUDGMENT

Mr. Organ: If the Court please, at this time we have [fol. 982] prepared a motion for a new trial along with a prepared motion and arrest of judgment. We are willing to submit these without argument at this time, if Your Honor please.

The Court: Off the record.

(Discussion off the record.)

The Court: Are there any further matters? (No response.) Mr. Organ, I would like to see you and Mr. Gremillion in my chambers, if you don't mind. If there is nothing further before the Court, we will now adjourn this special division of court.

(Thereupon, at 11:20 o'clock a.m., the proceedings in the above-entitled and numbered cause were adjourned sine die.)

[fol. 984] (Pursuant to the adjournment of February 6, 1963, the proceedings in the above-entitled and numbered cause were resumed on Thursday, February 28, 1963, at 10:00 o'clock a.m., appearances being the same as heretofore noted in the record.)

The Court: Gentlemen, I believe there has been submitted to the Court a Motion in Arrest of Judgment and a Motion for a New Trial. Do you gentlemen want to submit that matter at this time?

Mr. Organ: Yes, the Defense submits the motions, if the Court please.

MOTION IN ARREST OF JUDGMENT OVERRULED

The Court: The Motion in Arrest of Judgment addresses itself to the question of whether or not the entire proceedings in this case, of the Defendant, are null and void and in violation of the First Amendment of the United States Constitution as a restriction on the freedom of speech.

The Court has, of course, considered certain decisions that have been submitted to the Court on the question of freedom of speech, on the First Amendment of the United States Constitution, and I do not find that the statutory

provisions are null and void as being in violation of the First Amendment of the United States Constitution. Therefore, the Motion in Arrest of Judgment is overruled.

This brings us to the consideration of the Motion for a [fol. 985] New Trial. This motion is predicated upon a reiteration to a large extent of the same matters that were presented to the Court on preliminary motions filed and on bills of exception which arose during the course of the trial. They are predicated upon an allegation that the rulings of the Court on the prior proceedings were in error.

MOTION FOR A NEW TRIAL OVERRULED

I have gone over, of course, my prior rulings on every feature of this case in which a bill of exception was reserved, and I find nothing that is presented in the Motion for a New Trial that would be material or necessary or anything new in connection with the case that would authorize the granting of the Motion for a New Trial, and I will, of course, if a bill of exceptions is reserved in this matter, which I presume there will be, I will explain this more fully in my per curiam which will be attached to the proposed bill of exception. For that reason, the Motion for a New Trial is overruled.

Mr. Organ: If the Court please, we respectfully reserve bills of exception to the rulings of the Court on our Motion for a New Trial and our Motion in Arrest of Judgment. We ask that the bill of exception on the refusal to grant the new trial be numbered 25 and that it include all of the testimony and the evidence that has been adduced at the trial of this case, the entire record, the Motion for a New Trial and the Court's ruling thereon, and we ask that a [fol. 986] bill of exception to the Court's refusal to grant the Motion in Arrest of Judgment be numbered 26 and that bill of exception include all of the testimony, the evidence in the case, the entire record, the Motion in Arrest of Judgment and the Court's ruling thereon.

At this time, we have prepared these bills and we submit them to Your Honor now.

The Court: Of course, I would want time to consider what is in the bill. Does the Defendant understand that?

Mr. Organ: I understand that.

The Court: —and attach the per curiam to them.

Mr. Organ, I addressed a letter to Mrs. Dietrich with reference to some corrections in the record, my comment on the record. I sent you a copy and I sent a copy to Mr. Gremillion. Mr. Gremillion has answered that he has no objection to Mrs. Dietrich making the corrections. Do you have any objection to the corrections?

Mr. Organ: I have no objections to the corrections.

The Court: All right. Mrs. Dietrich, then I will see you later on this morning and give you my copy showing them.

I believe, Mr. Organ, also that it was agreed upon when my opinion was rendered that perhaps you would waive any further delays for sentence. Is that correct?

[fol. 987] Mr. Organ: Yes. If the Court please, the Defendant waives the delays and asks for immediate sentence.

The Court: I would like then at this time to recess for about ten minutes so I may look at the bills of exception before I impose the sentence. Court stands recessed.

(Whereupon, a ten-minute recess was taken.)

After the Recess

Sentence

The Court: I will say to the Defendant at this time that, having adjudged you guilty of the crime of defamation, it becomes my duty to impose sentence, which I can say that it is not a pleasant one.

It will not be my purpose to seek to go into a lecture on the situation but to assign my reasons after a careful and studied consideration of all the issues in this case. I have never discussed this question of sentence with anyone, and over the years that I have been on the bench, I have never discussed a question of what my sentence would be in any particular case.

In imposing sentence, there are some, regardless of what the sentence may be, who seem to think it may be too severe; there are others who may think it is too light. This is a matter that addresses itself to the discretion of the Court and is a matter to be determined by the Court in [fol. 988] its own good judgment after a conscientious appraisal thereof.

I can further assure the Defendant that I have no personal interest in this case, but have handled it just as fairly and impartially as I knew how. Rather than *imposing* highly technical rules of evidence, where the matter was addressed to my discretion, I have been very liberal to the State and the Defense in my rulings, but staying, however, within the rules of evidence. I felt that it was such a case that it should be fully presented.

In imposing sentence over the years, it has been my policy to weigh all of the facts and the law applicable very carefully. As a criterion, I have very often asked myself this question: Were I in the place of the Defendant and he in my place, what would I consider a fair sentence, based upon all the facts of the case? I would then, and do now, consider the sentence from both points of view. I would be less than frank if I did not say that the defamatory statement might not have been issued without some provocation. While provocation, under the circumstances of this case, does not amount to justification, still the principles of law admit of it in mitigation of punishment. There is another mitigating circumstance in that most all, if not all, of the eight judges have denounced the statement from the witness stand as false and untrue, and no witness was heard to say otherwise. Regardless of any outcome of this case, this [fol. 989] is a fact that you will have to live with. I am taking those mitigating circumstances into account. I could impose in this case a fine of $3,000 or imprisonment for not more than one year, or both fine and imprisonment. However, after careful and serious thought since the trial, I have come to the conclusion that no useful purpose could be served in imposing a jail sentence in this case, particularly under the mitigating circumstances, and, therefore, I am not going to impose a jail sentence. Neither do I think, under the mitigating circumstances and otherwise, that the maximum fine should be imposed, and I have weighed this very carefully. I have gone over and over it in my mind since the trial of the case in trying to arrive at a fair and just sentence in the case.

It is my studied judgment in this case that a fine of $1,000.00 would be, in my opinion, a fair and just sentence. Therefore, it is the sentence of the Court that the Defen-

dant, Jim Garrison, in this case should be fined the sum of $1,000.00.

Now, Mr. Organ, I am away from the sentence, and he will be released upon the same bond until I finish with the case, of course.

Now, Mr. Organ, I want to say this, and I am not saying it by way of any criticism, but the bills of exception were supposed to have been to me by the 16th; you didn't mail [fol. 990] them until the 18th, and I did not receive them until the 19th. Therefore, I was pushed night and day to try to get my per curiams written and seriously study your bills, so I presume you will ask for an order of appeal, but, quite necessarily, once I grant the order of appeal, I am divested of jurisdiction, and I would like to complete and sign the per curiams, because I finished them just fifteen minutes before I left Many. I want to go over those, and I will sign them and file them in the record, and I will wait until 2:00 o'clock—probably 2:00 or shortly thereafter, whatever time it takes me, 2:00 or shortly thereafter—to file the bills and my per curiams and then grant you your order of appeal. Will that be satisfactory?

Mr. Organ: We will submit an order of appeal in your chambers, if the Court please.

The Court: You can submit it, if you like. You can make the motion now, and I will pass on it at 2:00 o'clock.

Off the record.

(Discussion off the record.)

MOTION FOR ORDER OF APPEAL

Mr. Organ: We move at this time for an order of appeal to the Supreme Court of the State of Louisiana, and we have prepared such an order, if the Court please, and we will just submit it and you can sign it or grant it after the per curiams are in.

[fol. 991] The Court: That will be all right. Then I will try to be back in the courtroom by 2:00 o'clock, but, if I should be a little later, gentlemen, you will understand, but I will try to be back at that time.

Mr. Garrison: My apologies for the delay in the bills of exception, Your Honor.

The Court: That is all right.
We will recess then until 2:00 o'clock.

(Thereupon, at 10:30 o'clock a.m., a recess was taken until 2:00 o'clock p.m.)

[fol. 992] (Pursuant to the recess, Court reconvened at 2:00 o'clock p.m., appearances being the same as heretofore noted in the record.)

The Court: Mr. Organ, I believe I discussed with you in the presence of the other counsel or someone in the office there the matter of the imposition of the alternative sentence in default of payment of fine. I told you that it was my intention to amend and correct with respect to the alternative.
Mr. Organ: Yes, sir.

ALTERNATIVE SENTENCE

The Court: So will you at this time let the record reflect that, without objection, by consent of the Defendant, the sentence imposed of $1,000.00 in this case was imposed at the session this morning; that the Court at this time, acting under authority of the law, amends and corrects that sentence to the extent of imposing the alternative sentence that, in default of the payment of the fine, Defendant be confined in the Parish Prison for four months.
Now off the record.

(Discussion off the record.)

BILLS OF EXCEPTION WITH PER CURIAMS FILED

The Court: I am filing Bill of Exception No. 1, with per curiam attached; Bill of Exception No. 2, with per curiam attached; Bill of Exception No. 3, with per curiam attached; Bill of Exception No. 4, with per curiam attached; Bill of [fol. 993] Exception No. 6, with per curiam attached; Bill of Exception No. 8, with per curiam attached; Bill of Exception No. 9, with per curiam attached; Bill of Exception No. 10, with per curiam attached; Bill of Exception No. 11, with per curiam attached; Bill of Exception No. 15, with per curiam attached; Bill of Exception No. 16, with per

curiam attached; Bill of Exception No. 17, with per curiam attached; Bill of Exception No. 18, with per curiam attached; Bill of Exception No. 20, with per curiam attached; Bill of Exception No. 21, with per curiam attached; Bill of Exception No. 22, with per curiam attached; Bill of Exception No. 23, with per curiam attached; Bill of Exception No. 24, with per curiam attached; Bill of Exception No. 25, with per curiam attached; Bill of Exception No. 26, with per curiam attached.

Does that cover them all?

Mr. Organ: To the best of my recollection. I don't have my file with me, but I am sure that is.

The Court: I checked it against your letter under date of February 18th, your letter of transmittal.

Mr. Organ: That would be correct, yes, sir.

The Court: In the event it isn't, I don't presume there would be any objection, if I have overlooked any, but I don't think I have overlooked any of them.

Will you file those, please, Mrs. Sullivan.

[fol. 994] (Documents handed to the Clerk.)

The Court: Now at this time is there any other motion, gentlemen, that you care to make prior to the time that I sign the order for appeal? Is there anything further?

Mr. Organ: I didn't understand what Your Honor had said. I don't know whether—

The Court: I say—off the record.

(Discussion off the record.)

ORDER OF APPEAL AND BAIL GRANTED

The Court: I will make the return date on the 28th day of March, 1963, signing it at 2:08 o'clock p.m., this date. That order of appeal will be that the suspensive appeal be granted in this case on behalf of the Defendant, Jim Garrison, to the Supreme Court of the State of Louisiana, and let the return date be the 28th day of March, 1963, and, pending suspensive appeal, let the Defendant be released on bond in the amount of $500.00 on his own recognizance, dated New Orleans, Louisiana, the 28th day of February, 1963, at 2:08 o'clock p.m.

At this time, that concludes my services as Judge Ad Hoc of this Division.

(Thereupon, at 2:10 o'clock p.m., on Thursday, February 28, 1963, the proceedings in the above-entitled matter were adjourned.)

[fol. 996] CLERK'S CERTIFICATE (omitted in printing).

[fol. 997]

SUPREME COURT OF THE UNITED STATES

No. 400—October Term, 1963

JIM GARRISON, Appellant,

vs.

LOUISIANA.

Appeal from the Supreme Court of the State of Louisiana.

ORDER NOTING PROBABLE JURISDICTION—November 12, 1963

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is placed on the summary calendar.

LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
AUG 23 1963
JOHN F. DAVIS, CLERK

Supreme Court of the United States

OCTOBER TERM, 1963

No. [redacted] 4

JIM GARRISON,
Appellant

versus

STATE OF LOUISIANA,
Appellee

On Appeal from the Supreme Court of Louisiana

JURISDICTIONAL STATEMENT

Eberhard P. Deutsch,
Hibernia Bank Building,
New Orleans 12,
Attorney for Appellant.

Deutsch, Kerrigan & Stiles,
René H. Himel, Jr.,
Louis P. Trent,
Of Counsel.

INDEX

	Page
Opinions Below	2
Jurisdiction	2
Statutes Involved	2
Question Presented	4
Statement of the Case	5
The Facts	5
Presentation of the Federal Question	10
The Question is Substantial and Important	11
Appendix:	
Opinion and Judgment of the Supreme Court of Louisiana	29
Opinion of the Criminal District Court for the Parish of Orleans	105

Page

TABLE OF AUTHORITIES

Statutes:

Constitution of Louisiana, Article 7, Section 41 .. 3
Constitution of the United States:
First Amendment 1, 2, 4, 10, 12, 19, 22, 24, 27
Fourteenth Amendment 1, 2, 4, 10, 12, 27
Fox's Libel Law, 32 Geo. III, c. 60 19
Lord Campbell's Libel Act, 6 & 7 Victoria, c. 96 20
La. RS 14:47 ..... 2, 3
La. RS 15:560 11
La. RS 15:571.11 6
Sedition Law, Act of July 14, 1798, 1 Stat. 596 .. 19
28 USC 1257(2) 2, 28
28 USC 1257(3) 2, 28
28 USC 2103 ..... 2, 28

Cases:

Beauharnais vs Illinois, 343 US 250 (1952) 25, 26
Bridges vs California, 314 US 252 (1941) ..12, 14, 17, 22, 25
Chaplinsky vs New Hampshire, 315 US 568 (1942) 2, 13
Craig vs Harney, 331 US 367 (1947) 12, 24
Dahnke-Walker Co. vs Bondurant, 257 US 282 (1921) 2, 13
DeJonge vs Oregon, 299 US 353 (1937) 2, 13
De Libellis Famosis, 5 Coke's Reports 125a, 77 ER 250 (1605) 16, 17
Hartzell vs United States, 322 US 680 (1943) .. 25
The King vs Almon (1765) [Wilmot, Notes of Opinions and Judgments (1802)] 16
New York Trust Co. vs Eisner, 256 US 345 (1921) 13
Nye vs United States, 313 US 33 (1941) 24
Pennekamp vs Florida, 328 US 331 (1946) 12, 27

Page

People vs Croswell, 3 Johnson's Cases 337 (NY-1804) 20
Roth vs United States, 354 US 476 (1957) 26
Schenck vs United States, 249 US 47 (1919) 25
Tutchin, Trial of John, 14 Howell's State Trials 1095 (1704) 18
Wood vs Georgia, 370 US 375 (1962) 12, 27

Other:

Berns, Freedom, Virtue & The First Amendment (1957) 26
Chafee, Freedom of Speech and Press (1955) ... 18
Chafee, Free Speech in the United States (1954) 17, 19, 20, 23, 26
Chenery, Freedom of the Press (1955) 18
87 Cong. Rec. 5836-37 21
Cooley's Constitutional Limitations (8th ed., 1927) 20, 24
Corwin, Freedom of Speech and Press Under the First Amendment, 30 Yale Law Journal 48 (1920) 18, 20
Crosman, The Trial of John Peter Zenger, 10 Rocky Mountain Law Review 258 (1938) 18
Deutsch, Freedom of the Press and of the Mails, 36 Michigan Law Review 703 (1938) 24
Emerson, Toward a General Theory of the First Amendment, 72 Yale Law Journal 877 (1963) 21
Fox, History of Contempt of Court (1927) 16
Fox, The King v. Almon, 24 Law Quarterly Review 266 (1908) 16, 19
Heartman, John Peter Zenger (1934) 18
Hervey and Kelley, Some Constitutional Aspects of Statutory Regulation of Libels on Government, 15 Temple University Law Quarterly 453 (1941) 18

Page

Hudon, Freedom of Speech and Press in America (1963) 15, 16

Johnson, Freedom of the Newspaper Press, 200 Annals of the American Academy of Political and Social Science 60 (1938) ... 23

Kelly, Criminal Libel and Free Speech, 6 Kansas Law Review 295 (1958) 15, 22, 24

Madison, Report on the Virginia Resolutions, 4 Madison's Works (1865) 542 23

Nelles and King, Contempt by Publication in the United States, 28 Columbia Law Review 400 (1928) 20, 22

Note: Clear and Present Danger Re-examined, 51 Columbia Law Review 98 (1951) 24

Note: Constitutionality of the Law of Criminal Libel, 52 Columbia Law Review 521 (1952) 18, 21, 23

Smith, Freedom's Fetters (1956) 23

Stephen, History of the Criminal Law of England (1883) 24

Wilmot, Notes of Opinions and Judgments (1802) 16

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No.

JIM GARRISON,

Appellant

versus

STATE OF LOUISIANA,

Appellee

On Appeal from the Supreme Court of Louisiana

Appellant submits this statement to show that the instant appeal is within this Court's jurisdiction, in that the validity of the Louisiana statutory provision, defining and fixing penalties for the crime of defamation, and of a Louisiana constitutional provision providing for trial of misdemeanors without a jury, were brought in question in the State Supreme Court on the ground of their being repugnant to the First and Fourteenth Amendments to the Constitution of the United States, and the decision of that Court was expressly in favor of their validity.

Opinions Below

The opinion of the Supreme Court of Louisiana is reported at 154 So. 2d 400. That of the Criminal District Court for the Parish of Orleans, the court of first instance, has not been reported. Both opinions are printed in the Appendix, at pages 29 and 105 respectively, below.

Jurisdiction

This is a criminal prosecution for defamation, brought against appellant pursuant to Section 47 of Title 14 of the Louisiana Revised Statutes.

The judgment of the Supreme Court of Louisiana was rendered on June 4, 1963. R 173, 226. Rehearing was denied, and the judgment became final and executory, on June 28, 1963. R 226. The notice of appeal to this Court was filed in the Supreme Court of Louisiana on July 11, 1963. R 249.

This Court has jurisdiction of the appeal under 28 USC 1257(2). See *Chaplinsky vs New Hampshire*, 315 US 568 (1942); *DeJonge vs Oregon*, 299 US 353 (1937); *Dahnke-Walker Co. vs Bondurant*, 257 US 282 (1921); and footnote 2, page 13 below. If this appeal should be held not to fall within this Court's jurisdiction under 28 USC 1257(2), this Court has certiorari jurisdiction under 28 USC 1257(3) and 28 USC 2103.

Statutes Involved

The appeal involves the validity, under the First and Fourteenth Amendments to the Constitution of the United States, of the following Louisiana constitutional

and statutory provisions as applied to appellant under the particular facts of this case:

1—Constitution of Louisiana, Article 7, Section 41, 2 West's Louisiana Statutes Annotated—Constitution, 382:

> "All (criminal) cases in which the punishment may not be at hard labor shall, until otherwise provided by law, be tried by the judge without a jury."

2—Louisiana Revised Statutes, Title 14, Section 47, 9 West's Louisiana Statutes Annotated—Revised Statutes, 280:

> "§47 Defamation
>
> "Defamation is the malicious publication or expression in any manner, to anyone other than the party defamed, of anything which tends:
>
> "(1) To expose any person to hatred, contempt, or ridicule, or to deprive him of the benefit of public confidence or social intercourse; or
>
> "(2) To expose the memory of one deceased to hatred, contempt, or ridicule; or
>
> "(3) To injure any person, corporation, or association of persons in his or their business or occupation.
>
> "Whoever commits the crime of defamation shall be fined not more than three thousand dollars, or imprisoned for not more than one year, or both."

Question Presented

Appellant, District Attorney for the Parish of Orleans, made a statement to the press in reply to a statement, critical of appellant, given to the press by a recently retired Judge of the Parish Criminal Court. Appellant's statement charged the Judges of the Court with "misrepresentation of facts", with responsibility for a large backlog of untried criminal cases, with lack of sympathy toward appellant's use of investigators to uncover vice conditions, with blocking appellant's investigations of such conditions, with lack of concern at the paucity of trials for commercialized vice in past years, and with enjoying excessive vacations, and that the Judges' attitude "raises interesting questions about the racketeer influences on our eight vacation-minded judges".

Appellant was charged with having committed the crime of defamation, and was tried and convicted without a jury under the Louisiana constitutional and statutory provisions quoted above.

The Supreme Court of Louisiana affirmed the conviction, holding expressly that the Louisiana constitutional and statutory provisions are valid under the First and Fourteenth Amendments to the Constitution of the United States, and that, despite those Amendments, it need not, because of the difference between defamation and contempt, "consider the issues behind the phrase 'Clear and Present Danger'"; and it held also that "defendant's contention" that he was entitled to "the

procedural safeguard of a trial by jury is without merit".

The refusal by the Supreme Court of Louisiana to apply the clear-and-present-danger test, in affirming appellant's conviction without trial by jury, for criminal defamation in making the foregoing statement, presents the following question for decision by this Court:

> Whether the First and Fourteenth Amendments to the Constitution of the United States permit the State of Louisiana so to apply its constitutional provision for trial of misdemeanors without a jury, and its statutory provision making criminal defamation a misdemeanor, as to convict and sentence a parish District Attorney, without trial by jury, for publication of a statement critical of the official conduct of the Judges of the parish Criminal Court, when the District Attorney's statement plainly involved no clear and present danger, either to preservation of the peace or to the proper administration of justice.

Statement of the Case

The Facts

Following his induction into office as District Attorney of Orleans Parish (coterminous with the City of New Orleans) in May 1962, appellant embarked on a campaign of investigation and prosecution of commercial vice conditions—prostitution, gambling and B-drinking—in New Orleans' Bourbon and Canal Street districts. R 407-408.

Under Louisiana law (Revised Statutes, Title 15, Section 571.11), all fines and forfeitures imposed in criminal cases in Orleans Parish are deposited by the District Attorney in a special account. These funds are to be used in his discretion to defray the expenses of the Criminal District Court of the Parish, and of the District Attorney's office. The statute provides further that "no money shall be paid out of this fund except upon motion by the district attorney of Orleans Parish and approval by a judge of the Criminal District Court of Orleans Parish".

Since re-enactment of the cited statute substantially in its present form in 1959, such funds had been used, in part, to pay for investigations by the District Attorney's office; individual Judges had always approved disbursements from the special account for this purpose; and in the opening stages of appellant's investigation of vice conditions, individual Judges approved his use of the fund to defray the cost thereof. R 551, 630, 719, 725-26.

In August 1962, however, the Judges announced that no further disbursements from the fund would be approved until October, when all of the Judges would have returned from summer vacation and a new system for administering the fund could be established. R 451-52.

On October 4, 1962, the Judges met *en banc*. On the afternoon of that day, appellant was invited to join the meeting. When he arrived, he was advised

that although the relevant statute provides, as stated, for disbursements from the special fund on "approval by a judge" of the Court, no further motions for such disbursements would be approved except with the concurrence of five of the eight Judges. R 415-17, 743-44.

On October 26, 1962, the Judges again met *en banc*, and determined that no further disbursements for investigations by the District Attorney's office would be approved (R 567), and none have been approved since October 4, 1962 (R 737). On November 1, 1962, a recently retired Judge of the Court made a statement to the press, critical of appellant. R 439.

The following day, appellant, when asked by reporters whether he had any comment on this statement, made the remarks which are at issue in this case. R 262-69. These, as reported in the press, are printed in full in the opinion of the Supreme Court of Louisiana. See Appendix at page 31 below. R 41-45. Those portions of appellant's statement which may fairly be considered to constitute the gravamen of the complaint ultimately made, excluding repetitions, are as follows:

> "Apparently the judges have called in all their reserves. Whatever their resulting statement turns out to be, I doubt if the facts will be much more accurate than those in Judge O'Hara's statement. I will cite some glowing examples of misrepresentation . . . . . .
>
> "(After making reference to a backlog of untried criminal cases in Orleans Parish, ap-

pellant continued:) Inasmuch as the judges have been the only continuing caretakers of the criminal courts' operation over the years, it is pretty obvious where the real responsibility lies for the revised backlog of untried cases. District attorneys come and go every four years but the judges and the backlog always seem to be here . . .

"(After referring to Judge O'Hara's charge that the District Attorney's investigators were not made available in court, appellant continued:) Obviously this is nothing more than a petulant slap at our use of investigators to uncover vice conditions in the city—an operation with which the judges have shown a remarkable lack of sympathy. As a matter of fact, so opposed have the judges been to our vice investigations that they completely blocked us from our Bourbon Street investigation of B-drinking and other forms of vice . . . .

"The judges have now made it eloquently clear where their sympathies lie in regard to aggressive vice investigations by refusing to authorize use of the DA's funds to pay for the cost of closing down the Canal Street clip joints . . .

"Again the message is clear: 'Don't rock the boat, son. You are not supposed to investigate anything'. This raises interesting questions about the racketeer influences on our eight vacation-minded judges . . .

"Actually, the time for Judge O'Hara to be active in his concern for the district attorney's office was during the preceding four years when

> there was a complete breakdown of vice prosecution and prosecution of cases in every area. So complete was this breakdown that in the last several years there were almost no trials of any kind for commercialized vice. The judge at no time expressed any concern for the breakdown of the prosecution office . . .
>
> "It is incredible that in this country in 1962 that a man could wait 19 months before his case is disposed of, during which period the judge enjoyed over 300 days' vacation . . ."

The statement related solely to the Judges' official conduct. At no point did it refer to the private conduct of any of them.

The Attorney General filed a bill of information charging appellant with defamation of all eight of the Judges. R 40-45. On the same day, the Supreme Court of Louisiana appointed a District Judge from another district as Judge *ad hoc* to try the case against appellant. R 38.

The trial Judge, although holding that "the defamatory statement might not have been issued without some provocation" (R 988), found appellant guilty, and sentenced him to pay a fine of $1,000 or to serve four months' imprisonment. R 981, 989, 992. Appellant appealed the conviction and sentence to the Supreme Court of Louisiana, which affirmed the actions of the trial court. R 226.

Presentation of the Federal Question

By demurrer and motion to quash (R 51-52), motion for trial by jury (R 54-55) and bills of exception (Nos. 3 and 4, R 100-101, 104-105) filed before the trial, by propositions of law (Nos. 13 and 16, R 81, 84) and bills of exception (Nos. 21 and 23, R 148-49, 156-57) filed during the trial, and by motion in arrest of judgment (R 86) and bill of exception (No. 26, R 168) filed after the trial, appellant asserted that Louisiana's constitutional provision for trial of the charge against him without a jury, and that Louisiana's statutory provision defining and prescribing punishment for the crime of defamation, could not be applied to appellant in this case without violating his rights under the Fourteenth Amendment to the Constitution of the United States, for the reason that his statements were comments on the Judges' official conduct, and did not involve a clear and present danger to the preservation of the peace or to the proper administration of justice.

The trial Judge rejected this contention, overruling the demurrer and motion to quash (R 102-103), denying the motion for trial by jury (R 106-107), qualifying the propositions of law as being applicable only in contempt-of-court proceedings (R 150-51, 158-59), and denying the motion in arrest of judgment (R 169).

Appellant's contention as to unconstitutionality, under the First and Fourteenth Amendments, as applied to this case, of Louisiana's constitutional and statutory provisions for punishment as defamation, without trial

by jury, of the statements at issue, was presented on appeal in his brief (R 171, pages 30-55), as permitted by Louisiana Revised Statutes, Title 15, Section 560.

The rejection of this contention by the Supreme Court of Louisiana, in affirming the conviction and sentence, was express and specific:

> 1—"We conclude that LSA-R.S. 14:47-50 (defining, and prescribing the penalty for, defamation) are not null and void and are not prohibited by the First Amendment to the United States Constitution, guaranteed to citizens of the States by the Due Process Clause of the Fourteenth Amendment to that Constitution"; and
>
> 2—"We conclude that the provisions of Article VII, Section 41, of the Louisiana Constitution of 1921, authorizing trial by the judge alone in misdemeanor cases, are constitutional. We find no prohibition against such provisions in the Constitution of the United States or in the decisions of the United States Supreme Court."

Appendix, pages 65 and 73 below.

The Question is Substantial and Important

The federal question raised in this case presents a significant constitutional issue which, despite its obvious and elemental importance, has never before been presented to this Court for decision, and indeed has

apparently never before been decided directly by any court.

That issue is whether, despite the constitutional guarantee of freedom of speech and of the press under the First and Fourteenth Amendments, a State may so apply its criminal-libel law, and its procedural provisions for trial of misdemeanors, as to convict and sentence a citizen (the prosecuting attorney), without trial by jury, for publication of a statement critical of the official conduct of a group of judges, even though the statement involved no clear and present danger, either to preservation of the peace or to the administration of justice.

This Court has repeatedly held that statements critical of judges may not be punished through contempt-of-court procedures if no clear and present danger to the administration of justice is posed,[1] especially if the person who published the statement is himself a public official concerned with the administration of justice. *Wood vs Georgia*, 370 US 375, 394-95 (1962). Appellant relied primarily on these decisions in support of his position in this case.

The Supreme Court of Louisiana rejected the authority of this Cou. 's decisions on the ground that appellant was charged with defamation, not contempt of court; that "Louisiana treats defamation and con-

[1] *Craig vs Harney*, 331 US 367 (1947); *Pennekamp vs Florida*, 328 US 331 (1946); *Bridges vs California*, 314 US 252 (1941).

tempt as separate offenses"; that, accordingly, "it is unnecessary for us to consider the issues behind the phrase 'Clear and Present Danger'"; and that "defendant's contention that LSA-R.S. 14:47-50 fail to provide the procedural safeguard of a trial by jury is without merit". See Appendix, pages 64-65 below.[2]

As noted above, the Court then expressly rejected appellant's contentions that Louisiana's pertinent constitutional and statutory provisions, as applied in this case, are violative of the First and Fourteenth Amendments.

In *New York Trust Co. vs Eisner*, 256 US 345, 349 (1921), Justice Holmes said that "a page of history is

[2] The fact that appellant contended that Louisiana's constitutional and statutory provisions are unconstitutional, not on their face, but only as applied to him in this case (see page 10 above), does not derogate from this Court's jurisdiction over this appeal from the rejection of that contention below. In *Dahnke-Walker Co. vs Bondurant*, 257 US 282, 288-89 (1921), this Court, in maintaining its writ-of-error jurisdiction (the basis for which was the same as that for its appellate jurisdiction at this time), stated: "In the state court the plaintiff . . . distinctly insisted that as to the transaction in question the Kentucky statute was void . . . because in conflict with the commerce clause of the Constitution. The court did not accede to the insistence, but applied and enforced the statute. . . . The case is therefore of the class described in the first (writ-of-error) of the provisions which we have quoted from the jurisdictional section. That the statute was not claimed to be invalid *in toto* or for every purpose does not matter. A statute may be invalid as applied to one state of facts and yet valid as applied to another." In *Chaplinsky vs New Hampshire*, 315 US 568, 574 (1942), this Court upheld its appellate jurisdiction in a case in which the state court had affirmed a conviction under a state libel statute, as against the contention that the statute, as applied "to the facts disclosed by the record", was violative of the First and Fourteenth Amendments. In *DeJonge vs Oregon*, 299 US 353, 357 (1937), this Court exercised its appellate jurisdiction in a case in which the appellant's contention, that the statute "as applied to him" violated the due process clause, had been rejected below.

worth a volume of logic"; but the holdings of the Court below can be justified neither by logic nor by history.

As a matter of logic, it seems evident that the constitutional protection of criticism of the official conduct of judges, which this Court has long since established in its contempt decisions, would be worthless if a State could circumvent that protection, and convict a citizen for criticism of judges, without a jury trial and without regard for the clear-and-present-danger test, simply by calling the proceeding a criminal-libel, rather than a contempt-of-court, prosecution.

The illogic of such a result is emphasized by the admitted absence from this case, of any threat to the proper disposition of pending litigation, which this Court has held to be the only plausible ground for punishment of judge-criticism even by contempt process (see *Bridges vs California*, 314 US at 271): In its opinion below, the Supreme Court of Louisiana found explicitly that "defendant's expressions set out in the Bill of Information are not criticisms of a court trial or of the manner in which any one of the eight judges conducted his court when in session." See Appendix, page 66 below.

History affords no better basis than logic for distinguishing between punishment of judge-criticism by contempt and by criminal-libel prosecution, or for denying, in the latter, the constitutional safeguards

which protect the former. Not only have contempt and criminal-libel processes evolved concurrently as governmental devices for the suppression of publicly critical speech, but criminal-libel statutes are actually the older, and more common resort, of these twin enemies of the citizen's right to complain of official misconduct.

Criminal-libel process is, historically, the root-evil from which all of our present free-speech principles have really stemmed: "The most ancient and direct instrument for the legal control of communication has been the law of criminal libel." Kelly, *Criminal Libel and Free Speech*, 6 Kansas Law Review 295 (1958).

In the words of a recent commentator, "to trace the history of this body of law (free speech) in England, the starting point is the statute *De Scandalis Magnatum* enacted in 1275 which was political in nature and had as its object the preservation of the realm rather than the redress of private wrong. It provided for imprisonment of anyone who should disseminate false news or 'tales' from which discord might result between the king and his people. The statute was re-enacted in 1378 to include peers, prelates, justices, and various other officials . . . The re-enactments of 1554 and 1559 added 'seditious words' to the statute." Hudon, *Freedom of Speech and Press in America* (1963) 8.

Prosecution of political libels under this law, along with censorship and prosecution of contempts of court, were all eventually entrusted to the Court of Star

Chamber. *Id.*; Fox, *The King v. Almon*, 24 Law Quarterly Review 266 (1908).

As noted above, the original design of the statute *De Scandalis Magnatum* was to punish "political scandal"; "as the law was administered by the Court of Star Chamber the security of the state was regarded as imperilled by seditious libel against the rulers of the state". Hudon, *op. cit.*, 8, 10.

The original purpose of the contempt power was likewise "to keep a blaze of Glory around them (courts and judges), and to deter people from attempting to render them contemptible in the eyes of the Public". Wilmot, *Notes of Opinions and Judgments* (1802) 270, Undelivered Judgment in *The King vs Almon* (1765). [The influence of this undelivered opinion on the development of the law of contempt is traced by Sir John Fox in his *History of Contempt of Court* (1927), Chapter II.]

Later, as the concept that public officials should be exempt from criticism lost ground, new justifications for criminal-libel and contempt prosecutions were asserted—preservation in the one case of the peace, and in the other of the due administration of justice.

By the time of the leading Star-Chamber case *De Libellis Famosis*, at the beginning of the seventeenth century, both bases for criminal-libel actions were considered well-established, though sedition—especially as to judges—was still the preferred ground for com-

plaint: "Every libel (which is called *famosus libellus, seu infamatoria scriptura*) is made either against a private man, or against a magistrate or public person. *If it be against a private man it deserves a severe punishment,* for although the libel be made against one, yet it incites all those of the same family, kindred, or society to revenge, and so tends *per consequens* to quarrels and breach of the peace, and may be the cause of shedding of blood, and of great inconvenience: *if it be against a magistrate, or other public person, it is a greater offense;* for it concerns not only the breach of the peace, but also the scandal of the government; for what greater scandal of government can there be than to have corrupt or wicked magistrates to be appointed and constituted by the King to govern his subjects under him? And greater imputation to the state cannot be, than to suffer such men to sit in the sacred seat of justice, or to have any meddling in or concerning the administration of justice." 5 Coke's Reports 125a, 77 ER 250 (1605).[3]

Following abolition of censorship in seventeenth-century England, criminal-libel trials became the favored governmental weapon, both in the mother country and in the American colonies, against the free dissemination of critical ideas and controversial beliefs. Chafee, *Free Speech in the United States*

[3] Both justifications for contempt actions are still advanced to this day. As late as 1941, this Court had occasion to state, in a contempt case, that "the substantive evil here sought to be averted has been variously described below. It appears to be double: disrespect for the judiciary; and disorderly and unfair administration of justice." *Bridges vs California,* 314 US 252, 270.

(1954) 18, 499-504; Note: *Constitutionality of the Law of Criminal Libel*, 52 Columbia Law Review 521, 523 (1952). Sedition, rather than breach of the peace, continued to be the acknowledged principal danger guarded against by such actions. See, *e.g.*, the charge to the jury in the *Trial of John Tutchin*, 14 Howell's State Trials 1095, 1127 (1704).

One of the aspects of this persisting use of the criminal-libel proceeding to suppress liberty of expression, was the opportunity it afforded for striking some of the great blows for freedom in Anglo-American history, by the tough-minded juries who acquitted William Penn (on a related charge) and the Seven Bishops in England, and John Peter Zenger in colonial America, in defiance of contrary directions by the court.[4]

These verdicts were, strictly speaking, illegal when rendered, since even after the responsibility for prosecution of libels devolved on the common-law courts,

[4] The constitutional importance of Zenger's acquittal is amply documented. Gouverneur Morris called it "the germ of American freedom, the morning star of that liberty which subsequently revolutionised America." Crosman, *The Trial of John Peter Zenger*, 10 Rocky Mountain Law Review 258, 267 (1938). And "the verdict of this jury has been called 'the greatest victory encompassed in America by the democratic spirit before the signing of the Declaration of Independence and the one that made all others possible.'" Heartman, *John Peter Zenger* (1934) 60. See also Chafee, *Freedom of Speech and Press* (1955) 40; Chamery, *Freedom of the Press* (1955), Ch. VI; Corwin, *Freedom of Speech and Press Under the First Amendment*, 30 Yale Law Journal 48, 51 (1920); Hervey and Kelley, *Some Constitutional Aspects of Statutory Regulation of Libels on Government*, 15 Temple University Law Quarterly 453, 465 (1941); Note: *Constitutionality of the Law of Criminal Libel*, 52 Columbia Law Review 521, 524 (1952).

Star-Chamber influence placed severe limits on the jury's role. It was reserved to the court to determine whether the words at issue were punishable, the jury being charged only to find whether the accused had in fact published them. Chafee, *Free Speech in the United States* (1954) 499-504.

A parallel evolution took place in the contempt area. Contempts by utterance had originally been triable by jury in the common-law courts; but when contempt prosecutions returned to those courts on demise of the Star Chamber, the latter's summary non-jury process was carried over into the common-law contempt procedure. Fox, *The King v. Almon,* 24 Law Quarterly Review 266, 268-70 (1908).

The reaction to the long years of censorship and punishment of critical speech, which had been building in England and America throughout the eighteenth century, finally came to a climax in both countries at its end. In 1791, the United States adopted its Bill of Rights, which included the speech and press guarantees of the First Amendment to the Constitution. The following year, Parliament enacted Fox's Libel Law, which, by recognizing the jury's right to return a general verdict of not guilty in criminal-libel trials, removed all limitations on the jury's function in such cases.

Popular indignation, aroused by the brief American experiment with a Sedition Law, "wrecked the Federalist party", and thereafter "made Sedition Acts unthink-

able".[5] On the heels of Croswell's prosecution for political defamation, New York passed a statute, which became a model for the new nation, mirroring Fox's Libel Law, and establishing the defense of truth and good motives in criminal-libel cases. See *People vs Croswell*, 3 Johnson's Cases 337 (NY-1804). Criminal-libel prosecutions then fell into general disfavor and desuetude, both in this country and (at least following adoption, in 1843, of Lord Campbell's Libel Act admitting the defense of truth) in England.

As expressed by Professor Corwin, "in the long run the protest against the Sedition Act accomplished two results: It laid to rest the idea of a national common law of seditious libel of which the act was merely declaratory; while within the States it rendered prosecution for political libels less and less frequent until they ceased altogether, leaving officials dependent for their protection on the ordinary law of slander and libel." *Freedom of Speech and Press Under the First Amendment*, 30 Yale Law Journal 48, 51 (1920). And see Chafee, *Free Speech in the United States* (1954) 18; 2 *Cooley's Constitutional Limitations* (8th ed., 1927) 898.

The few abortive federal prosecutions for political comment assertedly defamatory, are collected in Justice Jackson's dissent in *Beauharnais vs Illinois*, 343 US 250, 289-90 (1952). It has long since become the settled policy of the United States Government not to prosecute under the District of Columbia's criminal-libel law for

[5] Chafee, *Free Speech in the United States* (1954) 27; 2 *Cooley's Constitutional Limitations* (8th ed., 1927) 900; Nelles and King, *Contempt by Publication in the United States*, 28 Columbia Law Review 400, 406 (1928).

criticism of government officials, because such prosecutions, if successful, "would constitute embarrassment not consistent with our support of freedom of the press". 87 Cong. Rec. 5836-37.

It must, however, be noted at this point, that such few libel prosecutions as have subsisted, have usually involved statements criticizing public officials;[6] a rather clear indication as to which of the traditional justifications for such proceedings—preservation of the peace, or preservation of magistrates from seditious utterances —still prevails, as it evidently did in the case at bar, as the real motivating factor for criminal-libel actions: "But under modern conditions, when the rule of law is generally accepted as a substitute for private physical measures, it can hardly be urged that the maintenance of peace requires a criminal prosecution for private defamation. . . . Criminal libel, when resorted to, can only result in suppressing popular expression. It would not be greatly different in its impact than employment of the law of seditious libel." Emerson, *Toward a General Theory of the First Amendment*, 72 Yale Law Journal 877, 924 (1963).

As the preceding quotation indicates, it is the consensus of constitutional writers, based on the *Zenger* trial, the historical developments in the struggle for free speech at the turn of the eighteenth century, and the fact that criminal libel was the chief means employed for sup-

[6] "The criminal libel cases of the present day indicate, however, that this almost obsolete action is being used by the authorities as a form of reprisal against those who criticize misconduct in office." Note: *Constitutionality of the Law of Criminal Libel*, 52 Columbia Law Review 521, 533 (1952).

pression of publications when the Bill of Rights was adopted, that it was the intention of the Framers of the First Amendment that "both censorship and seditious libel are rejected, and prosecutions for criticism of the government, without direct incitement to law breaking, are made impossible in the United States". Kelly, *Criminal Libel and Free Speech*, 6 Kansas Law Review 295, 310 (1958).[1]

This is no mere Johnny-come-lately concept. In the nineteenth century, Judge Cooley wrote: "An examination of the controversies which have grown out of the repressive measures resorted to for the purpose of restraining the free expression of opinion will sufficiently indicate the purpose of the guaranties which have since been secured against such restraints in the future. Except so far as those guaranties relate to the mode of trial, and are designed to secure to every accused person the right to be judged by the opinion of a jury upon the criminality of his act, their purpose has evidently been to protect parties in the free publication of matters of public concern, to secure their right to a free discussion of public events and public measures, and to enable every citizen at any time to bring the government and any person in authority to the bar of public opinion by any just criticism upon their conduct in the exercise of the authority which the people have conferred upon

[1] *Cf.* Nelles and King, *Contempt by Publication in the United States*, 28 Columbia Law Review 400, 406 (1928): "Insofar as a popular reaction which for 118 years made Sedition Acts unthinkable may be assimilated to adjudication of their unconstitutionality, it may seem also to have established the unconstitutionality of punishing libels of courts as contempts"—a proposition endorsed by this Court (subject to the clear-and-present-danger rule) thirteen years later, in *Bridges vs California*, 314 US 252.

them. . . . . If we are correct in this, it would not be in the power of the State legislature to pass laws which should make mere criticism of the constitution or of the measures of government a crime, however sharp, unreasonable, and intemperate it might be." 2 *Constitutional Limitations* (8th ed., 1927) 885, 901.[8]

From this constitutional principle, it follows, first, that "although jury trial in criminal libel cases may not be guaranteed by the Sixth Amendment as reflected in the Fourteenth", it must be placed among the constitutional protections of free speech "ensured by the embodiment of the First Amendment in the Fourteenth".[9]

And, by common consent, the constitutional protections to be afforded persons who are prosecuted for political

---

[8] "Except in time of war . . . the American newspaper press, then, may be said to be confirmed in the right to criticize public officials and their acts . . . This freedom was the field on which the historical combats for freedom of the press were fought. It is the right to criticize the government that has been championed in every great defense of free speech and a free press." Johnson, *Freedom of the Newspaper Press*, 200 Annals of the American Academy of Political and Social Science 60, 64 (1938). Accord: Smith, *Freedom's Fetters* (1956) 431; Chafee, *Free Speech in the United States* (1954) 18, 21, 149-52. *Cf. Report on the Virginia Resolutions (1799-1800)*, 4 Madison's Works (1865) 542: "This security of the freedom of the press requires that it should be exempt not only from previous restraint by the Executive, as in Great Britain, but from legislative restraint also; and this exemption, to be effectual, must be an exemption not only from the previous inspection of licensers, but from the subsequent penalty of laws."

[9] See Note: *Constitutionality of the Law of Criminal Libel*, 52 Columbia Law Review 521, 532 (1952). "There is convincing evidence that at the end of the eighteenth century freedom of discussion was thought to demand jury trial in criminal libel cases. Included in this evidence is the passage in England of Fox's Libel Act of 1792, the influence upon colonial feeling of the jury's action in acquitting Zenger in 1735, and the provision made for jury determination of issues of law and fact in early state constitutions as well as

criticism, also include the great substantive safeguard of the clear-and-present-danger test:[10] Sir James Stephen submitted, eighty years ago, that "every member of the public who censures the ruler for the time being exercises in his own person the right which belongs to the whole of which he forms part. He is finding fault with a servant. To those who hold this view fully, and carry it out to all its consequences, there can be no such offense as sedition. There may indeed be breaches of the peace which may destroy or endanger life, limb, or property, and there may be incitements to such offenses. But no imaginable censure of government, short of a censure which has an immediate tendency to produce such a breach of the peace, ought to be regarded as criminal." 2 *History of the Criminal Law of England* (1883) 299-300.

If this has been the constitutional law of England for 80 years and more, it would be anomalous to a degree, particularly in light of the long struggle against criminal prosecutions for political libel which culminated in the adoption of the First Amendment

---

the Sedition Act of 1798." *Id.* Accord: 2 *Cooley's Constitutional Limitations* (8th ed., 1927) 885; Deutsch, *Freedom of the Press and of the Mails*, 36 Michigan Law Review 703, 711 (1938). Also to be noted is the federal statute requiring jury trials in prosecutions for contempt of court by publication, given effect in *Nye vs United States*, 313 US 33 (1941). This Court again emphasized the jury question in reversing a contempt conviction, in *Craig vs Harney*, 331 US 367, 373 (1947).

[10] Kelly, *Criminal Libel and Free Speech*, 6 Kansas Law Review 295, 321-25 (1958). "By applying this stringent rule (the clear-and-present-danger test) since late in the 1930s, the Supreme Court has struck down each challenged interference wherever the legislation was specifically directed against the content of the utterance. This has been true in legislation involving either prior restraint or subsequent punishment." Note: *Clear and Present Danger Re-examined*, 51 Columbia Law Review 98, 99 (1951).

itself,[11] if a State could evade the procedural and substantive bulwarks—trial by jury, and the clear-and-present-danger rule—which this Court has raised in cases arising under the contempt power and under statutes designed to preserve, not merely the peace, but the Republic itself,[12] and could convict and punish a citizen for criticizing public officials without regard for those bulwarks, merely by labeling its prosecution "Criminal Libel" instead of "Contempt of Court" or "Sedition".

In holding that the State of Louisiana may so evade these constitutional safeguards in this case, the Supreme Court of that State relied mainly on the statement, in this Court's opinion in *Beauharnais vs Illinois*, that "libelous utterances not being within the area of constitutionally protected speech, it is unnecessary, either for us or for the State courts, to consider the issues behind the phrase 'clear and present danger.'" 343 US 250, 266 (1952). See Appendix, pages 59, 64 below.

But it hardly seems arguable that by this *dictum* this Court meant to turn its back on 700 years of protest and 170 years of constitutional evolution, and to open the floodgates to unrestricted sedition prosecutions disguised as criminal-libel trials. And in fact, the *Beauharnais* opinion itself makes clear that the unprotected "libelous utterances" to which reference is made, are

[11] "No purpose in ratifying the Bill of Rights was clearer than that of securing for the people of the United States much greater freedom of religion, expression, assembly, and petition than the people of Great Britain had ever enjoyed." *Bridges vs California*, 314 US 252, 265 (1941).

[12] *Schenck vs United States*, 249 US 47, 52 (1919); *Hartzel vs United States*, 322 US 680, 687 (1943).

restricted to "epithets or personal abuse"—"utterances (which) are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality". 343 US at 256-57. The opinion is careful to announce that the group criminal-libel law at issue in that case could not be applied, free of constitutional limitations, to "libels of political parties", since "political parties, like public men, are, as it were, public property". 343 US at 263, in footnote.[13]

In like manner, when it later held that "obscenity is not within the area of constitutionally protected speech or press", this Court was careful to distinguish between unprotected pornography on the one hand, and "material which does not treat sex in a manner appealing to prurient interest" on the other; the latter type of expression falling squarely under the shelter of "the liberty to discuss publicly and truthfully *all matters of public concern* without previous restraint or fear of subsequent punishment." *Roth vs United States*, 354 US 476, 485, 488 (1957).

---

[13] Chafee has similarly pointed the distinction between prosecution for socially valueless abuse of private individuals, and "punishing words because they express ideas which are thought to cause a future danger to the State". *Free Speech in the United States* (1954) 149. And see Berns, *Freedom, Virtue & The First Amendment* (1957) 152: "Beauharnais was not punished for anything he said, printed, or believed about the federal government, the state of Illinois, the city of Chicago, or any of their officials; the statute was not a sedition act. He was punished for what he said about other private citizens, over six hundred thousand of them."

Conclusion

It is respectfully submitted that this case presents a serious and substantial question as to whether published criticism of the official conduct of judges, especially when made by a prosecuting attorney closely involved in the administration of judicial business which was the subject of his criticism, is not protected by the First and Fourteenth Amendments from punishment for criminal libel, just as for sedition or contempt of court, without trial by jury and without regard for the question whether the criticism involved a clear and present danger to any interest which the State is entitled to protect.[14]

If this Court should hold that the constitutional safeguards, particularly the clear-and-present-danger test, are applicable in this case, then it follows, almost of course, that appellant's conviction must be reversed, since the Supreme Court of Louisiana recognized expressly that his statement, which could scarcely be considered more derogatory than those involved in this Court's *Pennekamp* and *Wood* decisions (see footnote 1 above and accompanying text), presented no threat to the administration of justice, and there was only slight danger of resort by the Judges to violent conduct to avenge his affront to their dignity.

[14] *Cf. Wood vs Georgia*, 370 US 375, 394-95 (1962): "The petitioner was an elected official and had the right to enter the field of political controversy, particularly where his political life was at stake. . . . The role that elected officials play in our society makes it all the more imperative that they be allowed freely to express themselves on matters of current public importance."

For these reasons, it is submitted that this appeal falls within this Court's jurisdiction under 28 USC 1257(2); but that if, for any reason, the case should be considered not to fall within this Court's appellate jurisdiction, the issue presented is of such great and obvious constitutional significance as to warrant the exercise of this Court's certiorari jurisdiction, which it has power to do on the basis of the appeal papers, under 28 USC 1257(3) and 2103.

Eberhard P. Deutsch,
Attorney for Appellant.

Deutsch, Kerrigan & Stiles,
René H. Himel, Jr.,
Louis P. Trent,
Of Counsel.

July, 1963.

Opinion and Judgment of the Supreme Court of Louisiana

HAMLIN, Justice:

The defendant, Jim Garrison, appeals from his conviction of the offense of Defamation[1] (LSA-R.S. 14:47) and his sentence to pay a fine of $1,000.00 or, in default of payment of said fine, to serve four months in the Parish Prison.

The Bill of Information charging the defendant with the offense of defamation recites:

> "Jack P. F. Gremillion, Attorney General for the State of Louisiana, who in the name and by the authority of the said State, prosecutes, in this behalf, in proper person comes into the Criminal District Court for the Parish of Orleans, in the Parish of Orleans, and gives the said Court here to understand and be informed that one Jim Garrison late of the Parish of Orleans, on the 2nd day of November in the year of Our Lord, one thousand nine hundred and sixty-two with force and arms in the Parish of Orleans aforesaid, and within the

[1] "Defamation is the malicious publication or expression in any manner, to anyone other than the party defamed, of anything which tends:

"(1) To expose any person to hatred, contempt, or ridicule, or to deprive him of the benefit of public confidence or social intercourse; or

"(2) To expose the memory of one deceased to hatred, contempt, or ridicule; or

"(3) To injure any person, corporation, or association of persons in his or their business or occupation.

"Whoever commits the crime of defamation shall be fined not more than three thousand dollars, or imprisoned for not more than one year, or both." LSA-R.S. 14:47.

jurisdiction of the Criminal District Court for the Parish of Orleans, did wilfully, unlawfully and maliciously defame each, George B. Platt, Judge of Section 'B', Criminal District Court for the Parish of Orleans and the presiding judge thereof, and one Malcolm V. O'Hara, Judge of Section 'A' of the Criminal District Court for the Parish of Orleans, one Edward A. Haggerty, Jr., Judge of Section 'C', Criminal District Court for the Parish of Orleans, one Thomas M. Brahney, Jr., Judge of Section 'D' of the Criminal District Court for the Parish of Orleans, one J. Bernard Cocke, Judge of Section 'E', Criminal District Court for the Parish of Orleans, one Oliver P. Schulingkamp, Judge of Section 'F', Criminal District Court, for the Parish of Orleans, one Shirley G. Wimberly, Judge of Section 'G', Criminal District Court for the Parish of Orleans, and Bernard J. Bagert, Judge of Section 'H', Criminal District Court for the Parish of Orleans, which said judges constitute all the entire bench of the Criminal District Court for the Parish of Orleans, and did publish and express in the public press of the City of New Orleans to persons other than the parties defamed which said publication and expressions are recited herein below of certain things which tend to expose to hatred, contempt and ridicule and deprive such persons of their benefit of public confidence and social intercourse. The said publication and expressions being contained in the following news item reproduced from the New Orleans States-Item,

(an afternoon daily newspaper published in the City of New Orleans, Parish of Orleans, published on November 2nd, 1962 which reads as follows, to-wit:

" 'TEXT OF GARRISON STAND ON JUDGES

" 'The statement by District Attorney Jim Garrison on his feud with the criminal district court judges follows:

" 'Apparently the judges have called in all their reserves.

"(A reference to the joint meeting of all criminal court judges today.)

" 'Whatever their resulting statement turns out to be, I doubt if the facts will be much more accurate than those in Judge (William J.) O'Hara's statement.

" 'I will cite some glowing examples of misrepresentation of facts.

" 'First of all is the attempt made to counterattack by imputing to this office the responsibility for the overcrowded conditions of the Parish Prison.

" 'Judge O'Hara makes the fantastic implication that somehow the system of operation of my office has created this condition. The short reply to this untruth is that the Parish

Prison was vastly overcrowded the day we were sworn in.

" 'There was not only a backlog of untried cases then. . . there has been for years.

" 'For example, the judge admits in his own statement that the (Leon D.) Hubert office inherited a backlog of 3500 cases. When we came into office in May, the backlog had risen to approximately 4600 cases.

" 'Inasmuch as the judges have been the only continuing caretakers of the criminal courts operations over the years, it is pretty obvious where the real responsibility lies for the revised backlog of untried cases.

" 'District attorneys come and go every four years but the judges and the backlog always seems to be here.

" 'Furthermore, I am sure that Judge O'Hara knows that no district attorney's office in years has pushed more cases to trial than we have in our first six months of office.

" 'We have prosecuted approximately 40 jury trials already—despite the fact that the winter term of the courts has just begun.

" 'An objective study by an outside agency will reveal that this is at least as many trials as were held the last two years prior to our arrival.

" To go on to another misrepresentation, Judge O'Hara has made the incredible statement that we have pulled our investigators away from the courts. The truth is that our investigators are with the trial assistant, invariably within arm's reach of the assistant, in full sight of the judge in every courtroom throughout every trial.

" 'Obviously this is nothing more than a petulant slap at our use of investigators to uncover vice conditions in the city—an operation with which the judges have shown a remarkable lack of sympathy.

" 'As a matter of fact, so opposed have the the judges been to our vice investigations that they completely blocked us off from our Bourbon Street investigations of B-drinking and other forms of vice.

" 'This was accomplished by the judges tying the purse strings of the district attorney's fines and fees and informing me that no further money could be used in the investigation of any vice conditions.

" 'The judges have specifically directed that the district attorney's office 'should not investigate anything' and informed me that they would allow me to use no further money from my large fines and fees—presently $40,000—for any form of vice investigation.

" 'In certain areas where we have spent borrowed money to keep operating against vice—in major handbook operations as well as in B-drinking cases—the judges have instructed me that this money will not be replaced out of fines and fees. I must pay this out of my own pocket.

" 'Again the message from the judges is clear. They do not want the district attorney's office to investigate anything.

" 'Interestingly enough, had I let them stop me in August as they attempted to do, I would not have been able to keep the pressure on the Canal Street B-joints, which ultimately resulted in the closing of all of them.

" 'I succeeded in keeping up the pressure on these places, despite the judges' tying of the purse strings, by my personal loan from the Bank of New Orleans.

" 'The Judges have now made it eloquently clear where their sympathies lie in regard to aggressive vice investigations by refusing to authorize use of the DA's funds to pay for the cost of closing down the Canal Street clip joints.. closed them, despite their (the judges') obvious attempts to block me, they now seek to slap the DA on the wrist by making him pay for this successful operation out of his pocket.

" 'Again the message is clear: 'Don't rock the boat, son. You are not supposed to investigate anything.'

" 'This raises interesting questions about the racketeer influences on our eight vacation-minded judges. This is a matter regarding which I will have (much[2]) more to say a little later.

" 'To go on to another misrepresentation of Judge O'Hara's statement, I am sure that he well knows that we did not throw out the trial preparation system of Mr. Hubert.

" 'That was junked four years ago by the preceding DA's office and there was no comment by Judge O'Hara about its disappearance throughout the four years.

" 'As a matter of fact, this office gives a special attention to the preparation of trial and has adopted a number of the excellent trial preparations of the Hubert era.

" 'To give a specific example, our office now is in the process of printing for distribution to every criminal defense attorney and every court the trial docket for the month to come.

" 'Our setting of particular cases on particular dates is so arrived at to avoid such conflicts as having cases in different courts by defendants or an attorney on the same day.

[2] The word "much" is contained in the newspaper article.

" 'Interestingly enough, this program was abandoned by the previous DA's administration, and again there was not a word from Judge O'Hara.

" 'O'Hara has now developed—subsequent to his retirement—a concern for the efficient operation of the trial dockets.

" 'Actually, the time for Judge O'Hara to be active in his concern for the district attorney's office was during the preceding four years when there was a complete breakdown of vice prosecution and prosecution of cases in every area.

" 'So complete was this breakdown that in the last several years there were almost no trials of any kind for commercialized vice. The judge at no time expressed any concern for this breakdown of the prosecution office.

" 'The first discernible interest on their part with regard to the district attorney's handling of vice cases arrived the past summer when it became apparent that this office was achieving success in its effort to eliminate the B-drinking racket in New Orleans.

" 'This is when, to my astonishment, I suddenly received instructions—through Judge O'Hara himself, speaking for the rest of the judges—that I could no longer spend any money out of fines and fees for anything.

" 'Since this was in August—there was not to be an en banc meeting until October—when all the judges returned from their vacations—this would have had the effect of blocking our vice investigations. This is when I borrowed money from the bank and continued to investigate B-drinking in spite of the judges.

" 'If the judges would show half as much interest in solving dangerous overcrowded conditions of the Parish Prison, and this overcrowding has been present for years not just the last few weeks, as they have shown in their successful attempts at completely blocking the anti-B-drinking operations of my office, the Parish Prison problem would be ended overnight.

" 'The efficiency and dispatch with which the judges of the present court stopped my undercover investigations of B-drinking and the resolve which they demonstrated in their uniform opposition to any continued vice investigation by this office would gladden the heart of any efficiency expert.

" 'It is unfortunate that there is no comparable interest on their part with regard to the problem of inmates awaiting trial month after month in the Parish Prison.

" 'It is incredible that in this country in 1962 that a man could wait 19 months before his

case is disposed of, during which period the judge enjoyed over 300 days vacation.

" 'There are now approximately 520 prisoners awaiting trial out of a prison population of 758. I think this is an outrageous condition which should be answered not by petulant words by the judges but by action—to immediately increase the number of trial days of this court so that the men can be brought to a speedy trial.'

contrary to the form of the Statute of the State of Louisiana in such case made and provided and against the peace and dignity of the same.

(Signed) JACK P. F. GREMILLION
Attorney General for the
State of Louisiana"

The record reflects that the statement or expression set forth in the foregoing Bill of Information was given by the defendant, Jim Garrison, District Attorney for the Parish of Orleans, to the New Orleans press and published by said press, after the judges of the Criminal District Court refused to sign orders for the payment of funds out of the Fines and Fees Fund for expenditures of the District Attorney. The District Attorney had taken no legal steps to compel the judges to sign said orders.

The Bill of Information, supra, was filed shortly after defendant's statement was published.

On November 13, 1962, the Supreme Court of the State of Louisiana appointed Honorable William H. Ponder, Judge of the Eleventh Judicial District Court, to sit as Judge ad hoc for the Criminal District Court for the Parish of Orleans for the trial of the instant cause, No. 177-418 of the Docket of the Criminal District Court for the Parish of Orleans, entitled "State of Louisiana versus Jim Garrison." Article VI, Section 12, of the Louisiana Constitution of 1921. LSA-R.S. 15:307. The order was effective immediately. The Presiding Judge of Section "C" of the Criminal District Court, to which section this case had been assigned, recused himself, and Judge Ponder ascended the Bench for the commencement of trial.

The defendant thereafter filed a Motion to Recuse, alleging:

> "That the Honorable P. F. Jack Gremillion, Attorney General for the State of Louisiana, who prosecutes this case in the name of the State of Louisiana, has publicly stated in the public press and otherwise, his belief that the integrity of the entire judiciary of the State of Louisiana is an issue in this case and has thus announced his intention of making the integrity of the Louisiana judiciary an issue in the trial thereof; that the said utterances and the proposed trial have had and will have the effect of making the entire judiciary of the State of Louisiana an interested party to this case within the meaning of the recusation statutes of the State of Louisiana.

"That the constitutional and statutory provisions of the State of Louisiana authorizing the arbitrary appointment by the Louisiana State Supreme Court of a trier of fact for a particular case, are unconstitutional and null and void as violative of the due process provisions of the Fourteenth Amendment, and that the appointment of the said Honorable William H. Ponder, under color of authority of the said provisions of the Louisiana State Constitution and Revised Statutes, is therefore null and void and of no force and effect."

The trial judge denied the above Motion to Recuse, and Bill of Exceptions No. 1 was reserved to his ruling.

In this Court appellant argues that:

"***the Honorable William H. Ponder prejudged this case, and had already—subconsciously—found the accused guilty of defamation when the trial began on January 21, 1963. In support of this contention we call the Court's attention to the fact that from the first moments of the trial, and continuously thereafter during the many days which the trial lasted, Judge Ponder referred in no uncertain terms to the per curiams which he would write in this case. No citation of authority is needed to prove that, once jeopardy has set in, per curiams are only written by a trial judge in the event the accused is found guilty and appeals from his judgment of conviction.***"

Appellant further states:

"It is the position of the accused that whether his guilt or innocence was to be determined by a judge or a jury, he was not provided with due process of law if the trier of fact was subject to arbitrary selection, particularly by the judiciary of the State of Louisiana. Even without the judiciary's interest in this matter, such an appointment would not provide a defendant in a misdemeanor case with due process since the logical extension of such a procedure could be to give the Supreme Court the power to appoint the jury in a felony matter. It is submitted that only a jury properly drawn, selected and empaneled, or a judge who has been duly elected to an office specifically empowered to decide guilt or innocence in criminal cases in a particular jurisdiction provides an accused with due process of law.

"In the instant case the Criminal District Court Judges took a most active and vigorous part in the prosecution of this accused. The integrity of the entire state judiciary was threatened and questioned by the widely publicized opinion of the Attorney General. In the minds of the general public this case became the case of the District Attorney versus the Judiciary. A verdict for the defendant would have condemned the judiciary, particularly in the eyes of the public. The judiciary could not stand in a position of the accusors, the judge, the jury and the executioners and give Jim Garrison a constitutional trial."

Article VII, Section 10, of the Louisiana Constitution of 1921, provides that the Supreme Court of the State of Louisiana shall have control of and general supervision over all inferior courts. Article VII, Section 12, of the Louisiana Constitution of 1921, empowers this Court to make an appointment such as was made herein. The appointment was therefore not in violation of any of the provisions of the State Constitution. We find no federal prohibition with respect to an appointment such as the instant one; it therefore follows that defendant's complaints with respect to a violation of the Fourteenth Amendment to the United States Constitution are without merit. The record is barren of any showing that the defendant suffered prejudice by the refusal of the trial judge ad hoc to recuse himself. LSA-R.S. 15:557. Defendant's arguments that he was deprived of due process of law, and that the Bill of Information should be dismissed because there is no proper judge in the State of Louisiana to try him, are also without merit.

LSA-R.S. 15:303[3] sets forth the causes for which any judge in any criminal case shall be recused; none of

[3] "The causes for which any judge in any criminal case shall be recused, shall be as follows: 1) His being interested in the cause; but in any cause in which the state, or one of its political subdivisions, or any religious corporation, is interested, the fact that the judge is a citizen of the state or a resident of the political subdivision; or pays taxes thereto, or that he is a member of the religious corporation, shall not constitute a ground for recusation. 2) His being the spouse of the accused or the party injured or one of the attorneys; his being related to the accused or to the party injured or to the spouse of the accused or the party injured within the fourth degree, or to one of the attorneys or to the spouse of one of the attorneys within the second degree. 3) His being a material witness in the cause. 4) His

these causes are applicable to the instant trial judge. A reading of the Motion to Recuse reflects that it contains general statements of conclusions, which do not constitute grounds for recusation. Under the circumstances, the trial judge could rule upon the Motion to Recuse, and he acted properly in ruling upon it.

> "The jurisprudence of this State is well-settled that if the allegations of the petition for the recusation of a judge are mere general statements of conclusions that the judge is prejudiced and biased against or hostile to the defendant because of personal or political reasons, or that if the petition does state facts which, if proved, would not constitute a legal ground for recusation, the judge who is sought to be recused may himself overrule the motion and need not refer it to another judge for trial. ***" State v Doucet, 199 La. 276, 5 So.2d 894. See, State v Laborde, 214 La. 644, 38 So.2d 371.

As stated supra, defendant argues that the trial judge had prejudged this case, and had already—subconsciously—found the accused guilty of defamation when the trial began on January 21, 1963. Defendant cites, among others, the following remarks of the trial judge:

> "***The Court has sustained any statements made after the objection has been made. It

---

having been employed or consulted as an attorney in the cause or his having been associated with an attorney during the latter's employment in the cause. 5) His having performed any judicial act in the cause in any other court." LSA-R.S. 15:303.

will be more fully covered in the per curiam of the Court.***"

"***The Court will set forth more fully its legal reasons for this ruling on these bills of exception in its per curiam, which will be attached to and made part of the bill of exceptions."

"***the Court allows it to be admitted, and the Court will assign its reasons for the admission in a per curiam, which will be attached to the Bill of Exception.***"

We do not agree with counsel's argument;[4] the record is replete to the effect that the trial judge did not prejudge this matter. It is clear to us that an experienced judge such as Judge Ponder (the trial judge herein) meant that he would amplify his rulings in his per curiams in the event of an appeal. Before rendering judgment, he aptly stated:

"***So in referring to my per curiam, the question of the per curiam, throughout the trial of the case, I want to qualify that to the extent that I intended, and if there be—there was no pre-judging of the case, but if there were intended to be reserved a bill of exception at any time during the trial of the case, my per curiam would further amplify my reasons."

[4] Defendant states in brief, "Of course we realize that there was no conscious prejudging of Garrison's case by Judge Ponder.***"

Bill of Exceptions No. 1 is without merit.

Bill of Exceptions No. 2 was reserved to the trial court's overruling of defendant's application for a Bill of Particulars. The application set forth the following questions:

"1.

"What are the exact words, phrases and/or sentences of the statement set forth in the Bill of Information that are alleged to be defamatory as to the judges named in the said Bill of Information?

"2.

"What are the exact words, phrases and or sentences contained in the said quoted statement that tend to expose to hatred, contempt or ridicule the judges of the Criminal District Court named in the said Bill of Information, or to deprive them of their benefit of public confidence and social intercourse?

"3.

"Does the State contend that the statement of the defendant set forth in the Bill of Information contains any allegations of fact which are not true?

"4.

"If the answer to Paragraph 3 above is in the affirmative, please set forth the exact words, phrases, and or sentences containing

allegations of fact which are alleged by the State to be untrue."

The State answered the above questions as follows:

"I.

"The State will rely upon the entire article as quoted in the Bill of Information.

"II.

"The State will rely upon the entire article as quoted in the Bill of Information.

"III.

"The State will contend that the statement of the defendant set forth in the Bill of Information constitutes malice in law and also malice in fact.

"IV.

"The entire expression and publication as quoted in the Bill of Information will be used as the basis on the trial as the alleged violation of the statute. The State will also prove the allegation of fact that the said statement was made and published by the said defendant on the date set forth in the indictment."

In this Court defendant contends that:

"In failing to order the State to tell this accused the exact words, phrases and sentences in the November 2 statement which the State contended were defamatory or untrue, the

trial judge abused the discretion vested in him by Article 288 of the Code of Criminal Procedure,[5] R.S. 15:288, to the detriment and disadvantage of the accused. See State v Butler 229 La. 788, 86 So.2d 906[6]. The Statement which forms the basis of this prosecution is quite long, and the trial court placed an unfair burden on this accused when it denied the Application."

Initially it is to be observed that when a party is charged with criminal defamation, "The words contained in the statement are to be given their ordinary meaning unless it is shown that they were capable of being used and were in fact used with a different meaning. The meaning of the statement is to be determined from an examination of the statement as a

[5] "Defects in indictments can be urged before verdict only by demurrer or a motion to quash, and the accused is not entitled to any bill of particulars as to the subject-matter charged in the indictment, but the trial judge may, in his discretion, require the district attorney to file in the case such data as, in the opinion of the judge, may be sufficient."

[6] In State v Butler 229 La. 788, 86 So.2d 906, the defendant was charged with unlawfully possessing, having under his control, selling, and delivering marijuana. The State refused to answer his application for a bill of particulars. Pertinent information sought was the names of the persons to whom defendant was alleged to have sold and to have delivered the marijuana. This Court granted defendant a new trial, stating, "However, while it is discretionary with the trial judge, he cannot arbitrarily refuse to order the State to furnish 'essential particulars.' That is exactly what the trial judge refused to do in this case." In a per curiam written on refusal of an application for rehearing, we stated that this Court must decide each case on the issues presented; and, in the matter involved, after considering the language of the bill of information, we said that we were of the opinion that the accused was entitled to the information sought so that he could adequately prepare his defense, and that in refusing to order the State to furnish the information the trial judge abused his discretion.

whole. The statement is to be interpreted in the light of the surrounding circumstances, and words apparently innocent may be shown to have been defamatory in fact." Wharton's Criminal Law and Procedure, 1957, Volume II, Section 884, Page 750. In State v Lambert 188 La. 968, 178 So. 508, (a prosecution in which the defendant was charged with libel), we held that in analyzing a document and determining its legal effect, the document must be considered as a whole. In interpreting articles of the Louisiana Criminal Code, LSA-R.S. 14:3 provides that the articles of the Code cannot be extended by analogy so as to create crimes not provided for therein; and, in order to promote justice and to effect the objects of the law, all of the provisions shall be given a genuine construction, according to the fair import of their words, taken in their usual sense, in connection with the context, and with reference to the purpose of the provision.

Under the circumstances of this case, we find that the State's answer (Art. IV supra), to the effect that the entire expression and publication as quoted in the Bill of Information would be used as the basis on the trial as the alleged violation of the Statute, was sufficient to enable the defendant to adequately prepare his defense. Additionally, the State informed the defendant (Art. III, supra) that it would contend that the statement of the defendant set forth in the Bill of Information constituted malice in law and also malice in fact. We conclude that there was no need for the State to further particularize exact words, phrases, and sentences.

> "***The State is not required to reveal in advance of the trial the facts on which it will rely in seeking a conviction." State v Mills 229 La. 758, 86 So:2d 895, Cert. denied, 77 S. Ct. 51, 52, 352 U.S. 834, 1 L.ED. 2d 53.

The proper function of a Bill of Particulars is to inform the accused in greater detail of the nature of the crime of which he is charged. State v Simpson 216 La. 212, 43 So.2d 585, Cert. denied, 70 S. Ct. 625, 339 U.S. 929, 94 L.Ed. 1350. We find that the answer of the State in the instant case performed the proper function of giving the defendant the details he required.

The trial judge exercised the discretion vested in him by LSA-R.S. 15:288 (Footnote 5, supra). We find that he did not abuse his discretion; we also find that the defendant did not suffer prejudice by the trial judge's overruling of the Motion for a Bill of Particulars. LSA-R.S. 15:557.

> "The complaint is without substance The granting or refusal of a bill of particulars addresses itself to the sound discretion of the trial judge. State v Agusta 199 La. 896, 7 So.2d 177; Articles 235, 288, Code of Criminal Procedure.***" State v Poe, 214 La. 606, 38 So.2d 359.

> "We reiterate that the matter of furnishing a Bill of Particulars rests largely in the discretion of the trial judge, and his discretion will not be disturbed unless there is error in

the ruling complained of to the detriment or disadvantage of the accused.***" State v Butler 229 La. 788, 86 So.2d 906.

Bill of Exceptions No. 2 is without merit.

Bill of Exceptions No. 3 was reserved to the trial court's overruling of defendant's Demurrer and Motion to Quash, which recites:

"***the said information and the matters therein are, as therein alleged and set forth, not sufficient in law to compel him, the said Jim Garrison, to answer thereto, for the following reasons, to-wit:

"1.

"That the statement set forth in the Bill of Information attributed to the defendant herein, Jim Garrison, contains no allegations of fact which are defamatory, or which could through any reasonable interpretation, tend to expose to hatred, contempt or ridicule or to deprive of their benefit of public confidence and social intercourse any of the judges of the Criminal District Court therein named as the persons defamed.

"2.

"That the statement set forth in the Bill of Information affirmatively reveals itself to be a comment on the conduct of persons in respect to public affairs and as such protected

by a qualified privilege; that despite the allegation of malice contained in the said Bill of Information herein, the statement attributed to the defendant affirmatively shows the absence of malicious motive; that the said statement shows the utterances contained therein to be in response to a previous public criticism by one Judge William O'Hara, and in defense of the defendant's performance of his duties as District Attorney in combating organized vice operations in the City of New Orleans.

"3.

"That to hold the statement set forth in the Bill of Information to be a violation of Revised Statute 14:47 or to interpret the said R.S. 14:47 defining the crime of defamation so as to include within the scope thereof the statement set forth in the Bill of Information in this case would violate the provisions of the First Amendment of the Constitution of the United States prohibiting abridgment of freedom of speech as the said amendment is made applicable to the State of Louisiana through the Fourteenth Amendment of the United States Constitution."

In this Court defendant argues:

"1. The criminal statutes defining defamation under which the charge against Garrison has been brought, Articles 47-50 of the Louisiana Criminal Code. R.S. 14:47-50, as well as

that portion of Article 1, Section 3, of the Louisiana Constitution authorizing such laws, are absolutely null and void in that they are prohibited by the First Amendment to the United States Constitution, guaranteed to citizens of the states by the Due Process Clause of the Fourteenth Amendment to that Constitution.

"A. Any law which in any fashion curtails freedom of expression violates the First Amendment to the Federal Constitution.

"B. In the alternative, these statutes are phrased in such broad general terms that they cover activities that in ordinary circumstances constitute an exercise of freedom of speech or of the press, and for this reason Articles 47-50 are void.

"C. Articles 47-50 fail to provide the procedural safeguard of a trial by jury which is essential to the protection of First Amendment rights.

"2. In the alternative it is contended that in the event Articles 47-50 defining the crime of defamation, R.S. 14:47-50, are found not to violate the Federal Constitution, still the accused's conviction of defamation for the statements set out in the bill of information filed herein deprives him of his right to freedom of expression, guaranteed to citizens of Louisiana by the Due Process Clause of the Fourteenth Amendment and the First Amendment to the United States Constitution."

Defendant also contends that the trial judge committed error in his refusal to apply the "Clear and Present Danger" test to this prosecution.

In his per curiam, the trial judge states that he would not pass upon defendant's first contention that the statement set forth in the Bill of Information was not defamatory so as to bring it within the statutory provisions of LSA-R.S. 14:47, because he did not think that the contention was properly presented on a Motion to Quash. He said that qualified privilege and malice were involved, and that proof thereof would require evidence, particularly on the issues of truth or falsity.

In State v Lambert 188 La. 968, 178 So. 508, we said, "The question as to whether a communication is privileged involves questions of fact as well as of law. State v Whitmire 166 La. 195, 116 So. 849. Where the facts are not disputed the question of privilege becomes one of law. Odgers on Libel and Slander 2d Ed., Sec. 183, p. 216; Newell on Slander and Libel, 4th Ed., Sec. 345, P. 385." In State v Masino 214 La. 744, 38 So.2d 622, we held that evidence may be taken on a Motion to Quash an indictment, but evidence is limited to procedural matters and may not include a defense on the merits.

In the publication set forth in the Bill of Information, the defendant states, among other things, that "* * * It is pretty obvious where the real responsibility lies for the revised backlog of untried cases"; that, "* * * so opposed have the judges been to our vice investi-

gations that they completely blocked us off from our Bourbon Street investigations of B-Drinking and other forms of vice"; that, "This raises interesting questions about the racketeer influences on our eight vacation-minded judges. * * *"; that, "* * * a man could wait 19 months before his case is disposed of, during which period the judge enjoyed over 300 days vacation"; and that, "There are now approximately 520 prisoners awaiting trial out of a prison population of 758." These are all assertions of fact which require the hearing of evidence.

We therefore find that the trial judge could not have passed upon the contention raised by the defendant in the first paragraph of his Demurrer and Motion to Quash without hearing evidence on matters other than procedural ones; under the jurisprudence, supra, he was correct in his ruling.

In his per curiam, the trial judge further states that he would not pass upon defendant's second contention that the Bill of Information is a comment on the conduct of persons in respect to public affairs and as such protected by a qualified privilege, because, "* * * the defendant would necessarily have to have a reasonable belief as to the truth of his comment as set forth in LSA-R.S. 14:49.[7] Also, it is well established that

[7] "A qualified privilege exists and actual malice must be proved, regardless of whether the publication is true or false, in the following situations: 1) Where the publication or expression is a fair and true report of any judicial, legislative, or other public or official proceeding, or of any statement, speech, argument, or debate in the course of the same. 2) Where the publication or expression is a comment made in the reasonable belief of its truth, upon, a) The conduct of a

proof of actual malice may destroy a qualified privilege.[8] Therefore, this could only be determined after trial, and was not such as would authorize the sustaining of a motion to quash."

We find that the trial judge was correct in not passing on the second contention raised in defendant's Demurrer and Motion to Quash. Reviewed in association with LSA-R.S. 14:48-49, it shows that it presents matters on which evidence would have had to be heard during trial; it was therefore not subject to the pleadings advanced.

In our discussion of the third contention raised in the Demurrer and Motion to Quash, we initially observe

---

person in respect to public affairs; or b) A thing which the proprietor thereof offers or explains to the public. 3) Where the publication or expression is made to a person interested in the communication, by one who is also interested or who stands in such a relation to the former as to afford a reasonable ground for supposing his motive innocent. 4) Where the publication or expression is made by an attorney or party in a judicial proceeding."

[8] "Where a non-privileged defamatory publication or expression is false it is presumed to be malicious unless a justifiable motive for making it is shown.

"Where such a publication or expression is true, actual malice must be proved in order to convict the offender." LSA-R.S. 14:48.

"There shall be no prosecution for defamation in the following situations: 1) When a statement is made by a legislator or judge in the course of his official duties. 2) When a statement is made by a witness in a judicial proceeding, or in any other legal proceeding where testimony may be required by law, and such statement is reasonably believed by the witness to be relevant to the matter in controversy. 3) Against the owner, licensee or operator of a visual or sound broadcasting station or network of stations or the agents or employees thereof, when a statement is made or uttered over such station or network of stations by one other than such owner, licensee, operator, agents or employees." LSA-R.S. 14:50.

that Article 1, Section 3, of the Louisiana Constitution of 1921, provides that, "No law shall ever be passed to curtail or restrain the liberty of speech or of the press; any person may speak, write and publish his sentiments on all subjects, *being responsible for the abuse of that liberty.*" (Emphasis ours.) The First Amendment to the United States Constitution recites that, "Congress shall make no law * * * abridging the freedom of speech * * *." The Fourteenth Amendment to the United States Constitution provides that, "* * * No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; * * *"

These constitutional provisions will be considered hereinafter in connection with LSA-R.S. 14:47-50, quoted supra. They will be considered in the light that. "The freedom of speech and of the press secured by the First Amendment against abridgment by the United States is similarly secured to all persons by the Fourteenth against abridgment by a state." Schneider v Irvington, 308 U.S. 147-165, 60 S. Ct. 146, 84 L.Ed. 155.

In Roth v United States, 354 U.S. 476, 77 S. Ct. 1304, 1 L. Ed. 2d 1498, we find the following statement with respect to the guaranties of freedom of expression:

> "The guaranties of freedom of expression in effect in 10 of the 14 States which by 1792 had ratified the Constitution gave no absolute

protection for every utterance. Thirteen of the 14 states provided for the prosecution of libel,[9] and all of those states made either blasphemy or profanity, or both, statutory crimes. As early as 1712, Massachusetts made it criminal to publish 'any filthy, obscene, or profane song, pamphlet, libel or mock sermon' in imitation or mimicking of religious services. ***" (Emphasis ours.)

"In light of this history, it is apparent that the unconditional phrasing of the First Amendment was not intended to protect every utterance. This phrasing did not prevent this Court from concluding that libelous utterances are not within the area of constitutionally protected speech. Beauharnais v. People of State of Illinois, 343 U.S. 250, 266, 72 S. Ct. 725, 735, 96 L. Ed. 919. * * *

* * *

"All ideas having even the slightest redeeming social importance—unorthodox ideas, controversial ideas, even ideas hateful to the prevailing climate of opinion—have the full protection of the guaranties, unless excludable because they encroach upon the limited area as more important interests. * * *"

In Beauharnais v. People of the State of Illinois, 343 U. S. 250, 72 S. Ct. 725, 96 L. Ed. 919, the defendant was charged by information in that he "did unlaw-

[9] Libel, slander, and malicious prosecution are all methods of defamation." 53 C.J.S. Libel and Slander, Sec. 1, p. 31.

fully . . . . exhibit in public places lithographs, which publications portray depravity, criminality, unchastity or lack of virtue of citizens of Negro race and color and which exposes (sic) citizens of Illinois of the Negro race and color to contempt, derision, or obloquy * * *." Beauharnais challenged the statute under which he was charged as being violative of the liberty of speech and of the press guaranteed as against the States by the Due Process Clause of the Fourteenth Amendment. The United States Supreme Court affirmed the conviction, making the following pertinent statements in its decision:

> "The statute before us is not a catchall enactment left at large by the State court which applied it. * * * It is a law specifically directed at a defined evil, * * *"

> "Libel of an individual was a common-law crime, and thus criminal in the colonies. Indeed, at common law, truth or good motives was no defense. In the first decades after the adoption of the Constitution, this was changed by judicial decision, statute or constitution in most States, but nowhere was there any suggestion that the crime of libel be abolished. Today, every American jurisdiction—the forty eight States, the District of Columbia, Alaska, Hawaii and Puerto Rico—punish libels directed at individuals. * * *"

> "Every power may be abused, but the possibility of abuse is a poor reason for denying Illinois the power to adopt measures against

criminal libels sanctioned by centuries of Anglo-American law. * * *"

"Libelous utterances, not being within the area of constitutionally protected speech, it is unnecessary either for us or for the State courts, to consider the issues behind the phrase 'clear and present danger.' Certainly no one would contend that obscene speech, for example, may be punished only upon a showing of such circumstances. Libel, as we have seen, is in the same class."

The United States Supreme Court has considered a number of cases cited by defendant, in which the defendants who were charged with contempt pleaded the protection of "Freedom of Speech." Before discussing these cases, we feel it pertinent to remark that under our Louisiana law the offense of defamation and the offenses of contempt and constructive contempt are not the same.

Constructive Contempt, West's LSA-C.C.P., Art. 224(8), is defined in part as, "Comment by a newspaper or other medium for the dissemination of news upon a case or proceeding, then pending and undecided, which constitutes a clear, present, and imminent danger of obstructing or interfering with the orderly administration of justice, by either influencing the court to reach a particular decision, or embarrassing it in the discharge of its judicial duties."

In Schenck v. United States, 249 U.S. 47, 39 S. Ct. 247, 63 L. Ed. 470, the United States Supreme Court spoke of "Clear and Present Danger" as follows:

> "* * *The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree. * * *"

In Bridges v. California, 314 U.S. 252, 62 S. Ct. 190, 86 L. Ed. 192, the defendants were adjudged guilty and fined for contempt of court; their convictions rested upon comments published in newspapers pertaining to pending litigation. Defendants challenged the State's action as an abridgment, prohibited by the Federal Constitution, of freedom of speech and of the press. In reversing the conviction, the United States Supreme Court stated in the beginning of its opinion that, "It is to be noted at once that we have no direction by the legislature of California that publications outside the court room which comment upon a pending case in a specified manner should be punishable." The Court went on to discuss the theory of evil, stating, "Moreover, the likelihood, however great, that a substantive evil will result cannot alone justify a restriction upon freedom of speech or the press. The evil itself must be 'substantial; it said, "* * * we are convinced that the judgments below result in a curtailment of expressions that cannot be dismissed as insignificant. If they can be justified at all, it must be in terms of

some serious substantive evil which they are designed to avert. The substantive evil here sought to be averted has been variously described below. It appears to be double: disrespect for the judiciary; and disorderly and unfair administration of justice."[10]

Pennekamp v. Florida, 328 U.S. 331, 66 S. Ct. 1029, 90 L. Ed. 1295, concerned contempt proceedings in which the defendant, Associate Editor of the Miami Herald, was charged with being contemptuous of the circuit court and its judges, in that he had published two editorials alleged to be unlawfully critical of the administration of criminal justice in certain cases then pending before the court. The United States Supreme Court reversed the conviction of the State Court on the theory of "Clear and Present Danger," stating, "The comments were made about judges of courts of general jurisdiction—judges selected by the people of a populous and educated community. They concerned the attitude of the judges toward those who were charged with crime, not comments on evidence or rulings during

[10] It is interesting to note that the Louisiana State Supreme Court followed the Bridges rule in a contempt proceeding, Graham v. Jones, 200 La. 179, 7 So. 2d 703, stating: "However, under the decision of the Supreme Court of the United States in the Bridges v. California and Times-Mirror Company v. Superior Court case, this proceeding for contempt against respondent must be discharged. * * *As we have pointed out in our opinion handed down today on the rules for contempt against the three New Orleans news papers, 7 So. 2d 688, the decision of the Supreme Court of the United States in matters of contempt has repudiated the test of reasonable tendency heretofore prevailing and has substituted therefor the test of clear and present danger. Applying that test to the publication under review, we are bound to hold that there was no clear and present danger that the editorial would or could sway the five members of this Court from acting according to their convictions in declaring that the Reorganization Amendment was unconstitutional."

a jury trial. Their effect on juries that might eventually try the alleged offenders against the criminal laws of Florida is too remote for discussion. Comm nt on pending cases may affect judges differently. It may influence some judges more than others. Some are of a more sensitive fiber than their colleagues. The law deals in generalities and external standards and cannot depend on the varying degrees of moral courage or stability in the face of criticism which individual judges may possess any more than it generally can depend on the personal equations or individual idiosyncrasies of the tortfeasor. * * * We are not willing to say under the circumstances of this case that these editorials are a clear and present danger to the fair administration of justice in Florida. Cf. Near v. Minnesota, 283 U.S. 697, 714, 715, 75 L. ed. 1357, 1366, 1367, 51 S. Ct. 625."

Craig v. Harney, 331 U.S. 367, 67 S. Ct. 1249, 9 L. Ed. 1546, involved contempt proceedings for an editorial challenging a Texas court's procedure. In reversing the conviction, the United States Supreme Court stated:

> "* * *But there was here no threat or menace to the integrity of the trial. The editorial challenged the propriety of the Court's procedure, not the merits of its ruling. Any such challenge, whether made prior or subsequent to the final disposition of a case, would likely reflect on the competence of the judge in handling cases. But as we have said, the power to punish for contempt depends on a more substantial showing. Giving the editorial all of

the vehemence which the court below found in it we fail to see how it could in any realistic sense create an imminent and serious threat to the ability of the court to give fair consideration to the motion for rehearing.

"There is a suggestion that the case is different from Bridges v. California * * *in that we have here only private litigation, while in the Bridges Case labor controversies were involved, some of them being criminal cases. The thought apparently is that the range of permissible comment is greater where the pending case generates a public concern. The nature of the case may, of course, be relevant in determining whether the clear and present danger test is satisfied. But, the rule of the Bridges and Pennekamp Cases is fashioned to serve the needs of all litigation, not merely select types of pending cases."

In Wood v. Georgia, 370 U.S. 375, 82 S. Ct. 1364, 8 L. Ed. 2d 569, defendant, an elected sheriff of Bibb County, Georgia, was held in contempt of court for expressing his personal ideas on a matter that was presently before the grand jury for its consideration; his ideas were conveyed to and published by the local press. In reversing the conviction and holding that defendant's right of freedom of speech had been abridged, the United States Supreme Court stated, "Our examination of the content of petitioner's statements and the circumstances under which they were published leads us to conclude that they did not present a danger to the administration of justice that

should vitiate his freedom to express his opinions in the manner chosen."

As stated supra, Article I, Section 3, of the Louisiana Constitution of 1921, provides that a person speaking or publishing his sentiments is responsible for an abuse of that liberty. LSA-R.S. 14:47-50 were enacted pursuant to this provision, and they are specifically directed at a defined evil. It is unnecessary for us to consider the issues behind the phrase "Clear and Present Danger." See Beauharnais v. People of the State of Illinois, 343 U.S. 250, 72 S. Ct. 725, 96 L Ed. 919, supra. LSA-R.S. 14:47-50 are an expression of Louisiana legislative will and have to do with the exposing of a person to hatred, contempt, or ridicule so as to deprive him of public confidence or social intercourse. We find nothing in the jurisprudence reviewed supra which prohibits such enactments as are herein under consideration. Also, as stated supra, Louisiana treats defamation and contempt as separate offenses; the jurisprudence we have heretofore reviewed dealt with the offense of contempt. As stated in the Roth and Beauharnais Cases, supra, libel has always been an offense under both common and statutory law. There have been many prosecutions under the libel laws; when the law and the evidence justified it, the person found guilty had a fine or prison sentence imposed on him. Freedom of Speech guaranteed under the Due Process clause of the Fourteenth Amendment has not been extended to those found guilty. See Roth and Beauharnais Cases, supra; State v. Lambert, 188 La. 968, 178 So. 508, supra.

We conclude that LSA-R.S. 14:47-50 are not null and void and are not prohibited by the First Amendment to the United States Constitution, guaranteed to citizens of the States by the Due Process Clause of the Fourteenth Amendment to that Constitution.

Defendant's contention that LSA-R.S. 14:47-50 fail to provide the procedural safeguard of a trial by jury is without merit and will be discussed hereinafter.

In the instant matter, it cannot be gainsaid that the use of the words "racketeer influences" when applied to anyone suggests and imputes that he has been influenced to practice fraud, deceit, trickery, cheating, and dishonesty.[11]

The expression that the judges have enjoyed 300 days vacation out of 19 months suggests and connotes a violation of the "Deadhead" statute, LSA-R.S. 14:138, Public Payroll Fraud.

---

[11] racketeer—"* * *a person who obtains money illegally, as by bootlegging, *fraud*, or especially, threats of violence. v.i. to obtain money in any of these ways." (Emphasis ours.)
fraud—"* * *a) deceit; trickery; *cheating*. b) in law, intentional deception to cause a person to give up property or some lawful right. 2. something said or done to deceive; trick; artifice. 3. (Colloq.) a person who deceives or is not what he pretends to be; impostor; *cheat*." (Emphasis ours.)
cheat—"* * *behave *dishonestly* or unfaithfully." (Emphasis ours.)
influence—"* * *2. a) the power of persons or things to affect others, seen only in its effects. b) the action or effect of such power. 3. the power of a person or group to produce effects without the exertion of physical force or authority, based on wealth, social position, ability, etc. 4. a person or thing that has influence."
Webster's New World Dictionary, World Publishing Co., 1957.

Other expressions set out in the Bill of Information connote malfeasance in office. LSA-R.S. 14:134, Art. IX, Sec. 1, La. Const. of 1921.

We conclude that the expressions of the defendant, as set out and charged in the Bill of Information were of a defamatory nature; they are alleged to be defamatory and to have been made maliciously; they were not subject to the protection of the First Amendment to the United States Constitution. All that we are considering in this Bill of Exceptions is the legal sufficiency of the Bill of Information and defendant's Demurrer and Motion to Quash filed to the Information. The questions of malice and proof of demamation will be discussed hereinafter.

Defendant's expressions set out in the Bill of Information are not criticisms of a court trial or of the manner in which any one of the eight judges conducted his court when in session. The expressions charged contain personal attacks upon the integrity and reputation of the judges which warranted trial on the merits.

Bill of Exceptions No. 3 is without merit.

Bill of Exceptions No. 4 was reserved to the denial by the trial judge of defendant's motion for trial by jury, which motion recites in part:

> "That the provisons of Article 7, Section 41 of the Louisiana State Constitution authorizing trial by the judge alone in cases of mis-

demeanor is unconstitutional, null and void in that the said State Constitutional provision is in violation of the Sixth and Fourteenth Amendments of the United States Constitution, depriving petitioner of his right to trial by jury and depriving him of the due process of law.

"That in the alternative defendant alleges that any issue involving the determination of Constitutional rights in general and the right of freedom of speech in particular must be tried by jury under the requirements of the above mentioned United States Constitutional provisions; that the trial of this case will necessarily involve a determination as to certain fundamental Constitutional rights of the defendant and that the trial of this case without jury would serve to deny to defendant due process of law under the Sixth and Fourteenth Amendments of the United States Constitution."

In this Court defendant advances the same contentions as set forth in his motion for trial by jury; he raises the additional argument that the reasoning and holding of the United States Supreme Court in the case of Gideon v. Wainwright, ... U.S. ...., 83 S. Ct. 792, ... L. Ed. 2d ...., decided March 18, 1963, should be applied to the instant bill.

Article VII, Section 41, of the Louisiana Constitution of 1921, provides:

"***All cases in which the punishment may not be at hard labor shall, until otherwise pro-

vided by law, be tried by the judge without a jury. Cases, in which the punishment may be at hard labor, shall be tried by a jury of five, all of whom must concur to render a verdict; cases, in which the punishment is necessarily at hard labor, by a jury of twelve, nine of whom must concur to render a verdict; cases in which the punishment may be capital, by a jury of twelve, all of whom must concur to render a verdict." (Emphasis ours.)

LSA-R.S. 15:340 recites:

"Every misdemeanor shall be triable by the judge without the intervention of a jury."

LSA-R.S. 15:341 states:

"A misdemeanor is defined to be an offense, the punishment of which is necessarily a fine or imprisonment in the parish jail or both."[12]

LSA-R.S. 14:47, under which the defendant was charged, provides that, "Whoever commits the crime of defamation shall be fined not more than three thousand dollars, or imprisoned for not more than one year."

Amendment VI to the United States Constitution recites:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public

[12] In Green v. United States, 356 U.S. 165, 78 S. Ct. 632, the United States Supreme Court held that Criminal Contempt cases are not subject to jury trial as a matter of constitutional right. Cf. Loyola Law Review, 1961-62, p. 49.

> trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

In State v. Hadad, 142 La. 69, 76 So. 243, this Court has held that the provisions of the Sixth Amendment of the United States Constitution relating to jury trials refer to prosecutions for the violation of federal statutes and not to prosecutions in state courts for violations of state statutes. See, 20 La. L. Rev. 680; Cf. State v. Pailet, 139 La. 697, 71 So. 951. See, also, State v. Harvey, 159 La. 674, 106 So. 28, Cert. denied, 273 U.S. 635, 71 L. Ed. 815, 47 S. Ct. 20.

In State v. Porter, 176 La. 673, 146 So. 465, we have held that parties may waive or renounce what law establishes in their favor, unless expressly or impliedly prohibited by law or public policy. We stated emphatically, however, that, "The law which provides that persons charged with capital offenses or those necessarily punishable by imprisonment at hard labor shall be tried by juries was made in the interest of both the accused parties and the state and neither is permitted to derogate from it. State v. Thompson, 104 La. 167, 28 So. 882; State v. Jackson, 106 La. 189, 30 So. 309." Cf. Patton v. United States, 281 U. S. 276, 50 S. Ct. 253, 74 L. Ed. 854.

In State v. Livaudais, 161 La. 882, 109 So. 536, we stated:

> "The responsibility resting upon the trial judge, and the latitude of discretion invested in him, in a prosecution for libel is exceptionally great. The penalty is either fine or imprisonment, or both, at the discretion of the judge. Rev. Stat., Sec. 804. In such case, the fine may be as great as $1,000, or as small as the judge deems fit; and the term of imprisonment may be as long as two years, or as short as the judge deems fit. Rev. Stat. Sec. 982. The imprisonment being without hard labor, the case must be tried by the judge, without a jury. Const. art. 7, Sec. 41, p. 50. The defendants in such case have no right of appeal, unless the judge sees fit to impose a fine exceeding $300, or imprisonment for a term exceeding six months, and even then, there is no appeal from the judge's findings of fact on the question of guilt or innocence. Const. art. 7, Sec. 10, par. 7."

In Betts v. Brady, 316 U. S. 455, 62 S. Ct. 1252, 86 L. Ed. 1595, Betts was indicted for *robbery*. He was unable to employ counsel, and he was refused his request for such after informing the trial judge of his indigent position. Without waiving his asserted right to counsel, he pleaded not guilty and elected to be tried without a jury. The judge found him guilty and imposed a sentence of eight years. Betts applied for Habeas Corpus while serving his penitentiary term; the writ was granted, but relief was denied by the

State court. The United States Supreme Court granted Certiorari and affirmed the lower court, stating:

> "The Sixth Amendment of the national Constitution applies only to trials in federal courts. The due process clause of the Fourteenth Amendment does not incorporate, as such, the specific guarantees found in the Sixth Amendment although a denial by a state of rights or privileges specifically embodied in that and others of the first eight amendments may, in certain circumstances, or in connection with other elements, operate, in a given case, to deprive a litigant of due process of law in violation of the Fourteenth. * * *"

In Gideon v. Wainwright, supra, Gideon was charged in a Florida State court with having broken and entered a poolroom with intent to commit a misdemeanor. *This offense is a felony under Forida law.* Gideon was unable to employ counsel, and his request for such was denied by the court. He conducted his own defense and was found guilty by a jury; he was thereafter sentenced to serve five years in the penitentiary. The United States Supreme Court granted Certiorari to review a decision of the Florida Supreme Court on hearing of a Writ of Habeas Corpus to the effect that refusal to appoint counsel for Gideon did not deprive him of his constitutional rights. Betts. Brady, supra, was reviewed; with respect to its holding in that case, the United States Supreme Court stated:

> "We accept Betts v. Brady's assumption, based as it was on our prior cases, that a pro-

vision of the Bill of Rights which is 'fundamental and essential to a fair trial' is made obligatory upon the States by the Fourteenth Amendment. We think the Court in Betts was wrong, however, in concluding that the Sixth Amendment's guarantee of counsel is not one of these fundamental rights. Ten years before Betts v. Brady, this Court, after full consideration of all the historial data examined in Betts, had unequivocally declared that 'the right to the aid of counsel is of this fundamental character.' Powell v. Alabama, 287 U.S. 45, 68, 53 S. Ct. 55, 63, 77, L. Ed. 158 (1932).

****

"The Court in Betts v. Brady departed from the sound wisdom upon which the Court's holding in Powell v. Alabama rested. Florida, supported by two other States, has asked that Betts v. Brady be left intact. Twenty-two States, as friends of the Court, argue that Betts was 'an anachronism when handed down' and that it should be overruled. We agree."

Since the present defendant was only charged with a *misdemeanor*, and the defendants in the Betts and Gideon Cases were charged with a *felony*, we do not think that the cases are apposite. As stated supra, Article VII, Section 41, of the Louisiana Constitution of 1921, provides that a defendant in a *felony case shall be tried by a jury*. In State v. Porter, supra, we held that trial by jury cannot be waived in certain instances.

We do not think that a comparison can be made between a request for counsel in a felony case and a request for trial by jury in a misdemeanor case. In one instance, there is an indigent defendant who cannot afford to have his defense properly presented asking for counsel to be appointed by the court to represent him; in the other, the defendant objects to trial of a misdemeanor by a skilled trier of facts and law (his responsibility is set out in State v. Livaudais, supra) and asks for trial by jury. We conclude that Gideon v. Wainwright, supra, is not controlling of the instant prosecution; here the defendant neither suffered prejudice nor deprivation of due process of law under the Fourteenth Amendment.

We conclude that the provisions of Article VII, Section 41, of the Louisiana Constitution of 1921, authorizing trial by the judge alone in misdemeanor cases, are constitutional. We find no prohibition against such provisions in the Constitution of the United States or in the decisions of the United States Supreme Court.

Bill of Exceptions No. 4 is without merit.

Bill of Exceptions No. 5 is neither a part of the record nor argued in the State's or defendant's brief. We conclude that it has been abandoned.

Bill of Exceptions No. 7 is not a part of the record; it is not included in the State's brief, and it is only mentioned by number in the defendant's brief. We conclude that it has been abandoned.

Bill of Exceptions Nos. 6, 8, 9, and 11 will be included under one heading because of their similarity of content.

Bill of Exceptions No. 6 was reserved when the trial court permitted the State to ask Arthur Roane (a newspaper reporter for the Times-Picayune, a New Orleans paper, who had previously testified that he was present in the District Attorney's office on the morning of November 2, 1962, and that the defendant had made a statement to him), "Did you make a report of this statement to your paper?" The objection of counsel for the defendant was to the effect that the Bill of Information charges defamation resulting from the publication in the New Orleans States-Item, and that the defendant was not charged with defamation as a result of publication in the Times-Picayune. He contended, "That statement is irrelevant and immaterial that he reported to the Times-Picayune."

The ruling of the trial court with respect to Bill of Exceptions No. 6 recites:

> "* * *The Court rules that solely for the purpose of showing *malice*, this evidence will be admissible and is restricted to the question of showing *malice*. There has been raised in the preliminary motion filed herein the question of a qualified privilege by the Defendant and if the Court finds that it was in fact a question of law, that there is a qualified privilege, then the burden of proof would shift to the Plaintiff—to the State—to show malice—

actual malice, regardless of the truth or falsity of the statement. So for that reason, the evidence is admitted solely for the purpose of showing *malice*. Now, you may answer the question and you may reserve your bill." (Emphasis ours.)

Bill of Exceptions No. 8 was reserved when the trial judge permitted the following testimony of Arthur Roane:

"Q. Did he make a statement to you on November 9?
"A. I suppose he did. He makes statements to me very often.
"Q. Did he make a statement to you that he threatened to take racketeering influences of the Judges to the Grand Jury?

* * *

"Q. What was Mr. Garrison's statement to you?
"A. You are referring to this particular question there?
"Q. The article that you just refreshed your memory on.

(Discussion)

"Q. Did Mr. Garrison make that statement to you?
"A. Yes. I don't know if it was on the particular date preceding this paper but he had said that to me."

In overruling the objection of counsel for the defendant to the above testimony, the trial judge stated, "The statement is admitted for the purpose of showing malice and Courts have held that statements made even after the time are admissible if they are connected with it."

Bill of Exceptions No. 9 was reserved when the trial judge permitted Jack Kneece, a General Assignment Reporter for the Times-Picayune, to testify with respect to his coverage of a meeting of the Press Association in the International Trade Mart Building on Saturday night, January 12, 1963. His testimony is to the effect that the defendant spoke for fifteen to twenty minutes at the meeting, and that part of the speech was directed to the question of racketeering influences on the judges involved.

In admitting the testimony of Kneece, the trial judge stated that he refused to strike the evidence from the record for the reason that "it was found to be introduced under the general ruling that the statement he made with reference to this case was admissible only for the purpose of showing malice, and the evidence is restricted to that and to that alone."

Bill of Exceptions No. 11 was reserved when Robert Kelso, a newspaper reporter for the States-Item, was permitted to testify according to his recollection with respect to parts of a talk given by the defendant on January 11, 1963, at the Monteleone Hotel. Kelso's testimony was with respect to statements made by

the defendant with regard to the eight judges herein involved and was admitted for the purpose of showing malice.

In this Court defendant argues that:

> "The trial judge erred in admitting these other statements of the accused in evidence at this trial on the theory that they were admissible under Article 445-446 of the Code of Criminal Procedure, R.S. 445-446 to show malice on the part of the accused, which the State would have to prove should the court hold that the November 2 statement was privileged. ***These other statements of the accused involved in these bills were also comments upon the conduct of the Judges in respect to public affairs, made by the accused in the reasonable belief of their truth, and hence they also were privileged, and malice could not be inferred from these privileged statements any more than it could be inferred from the November 2 statement. The State had the burden in this proceeding of establishing malice on the part of the accused toward the Judges by positive evidence tending to show that the accused felt hatred and ill will toward the Judges and wanted to hurt them, and that this hatred, ill will and desire to injure on his part was the motivating cause of this November 2 statement. See Clark and Marshall, Crimes, p. 76, Sec. 48 (1952); State v. Lambert, 188 La. 968, 178 So. 508. The State completely failed to offer any evidence of this type; instead, the State's witnesses testified that the accused showed and expressed no hos-

tility toward the Judges, but was actuated by the belief that a public wrong had been committed and that it was his duty to inform the public of this fact. *** The basis of the trial judge's holding that Garrison acted from malice in this matter is that these other statements of the accused reveal malice on his part. * * * Thus, prevented by the statutes and jurisprudence of this state from inferring malice from the November 2 statement, he inferred it from the other privileged statements.

"The trial judge erred in admitting these other statements in evidence, and he doubly erred in using them to impute malice to Garrison. If malice cannot be inferred from one privileged publication, how can it be inferred from three other equally privileged publications?"

In answer to the Application for a Bill of Particulars the State said that it would contend that the statement of the defendant set forth in the Bill of Information constitutes malice in law and also malice in fact.

"Under the express terms of the statute, malice is an ingredient of the crime of libel. Without malice there can be no criminal responsibility. The general rule is, that legal malice, which in law means a wrongful act done intentionally, without just or lawful excuse, is sufficient to support a charge that the publication is libelous. And malice is presumed by the publication. But the rule has its limitations in cases of privileged communica-

tions. State v. Bienvenu, 36 La. Ann. 378. Where the communication is privileged, malice is presumed by law. Berot v. Porte, 144 La. 805, 81 So. 323, 3 A.L.R. 1651. In such communications the privilege can only be destroyed by actual malice, legal malice is not sufficient for the purpose.

* * *

"If the privilege is only qualified the onus lies on the plaintiff in a civil suit or on the State in a criminal prosecution of proving actual malice. This may be done either by extrinsic evidence of personal ill feeling or by intrinsic evidence, such as the exaggerated language, the mode and extent of the publication, and other matters in excess of the privilege. Odgers on Libel and Slander, 2d Ed., p. 438." State v. Lambert, 188 La. 968, 178 So. 508.

"There is much confusion with respect to the use and meaning of the term 'malice' in the law of defamation. In one sense it denotes merely the absence of lawful excuse or privileged occasion; in another it denotes ill will, evil motive, intention to injure, or wanton disregard of the rights of others." 53 C.J.S. Libel and Slander, Sec. 2, p. 35.

"In its popular sense, the term 'malice' means hatred, ill will or hostility to another, but this is not necessarily its meaning in law. In its broadest legal sense, it means the state

of mind of a person, irrespective of his motive, whenever he consciously violates the law. Under this concept every person who is sui juris, and who, without justification or excuse, wilfully does an act which is prohibited and made punishable by law as a crime, acts maliciously. * * *

* * *

"Express and Implied Malice.—Malice is divided into express and implied malice. Express malice * * * is actual malice, or malice in fact, and exists when a person actually contemplates the injury or wrong which he inflicts,—as when a man shoots at another with the intent to kill him.

"Implied malice * * * otherwise called constructive malice, or malice in law, is where the law implies or imputes malice because of the nature of the act done, and irrespective of the actual intent of the party. * * *" Clark and Marshall, Crimes, Sec. 5.05, p. 248.

"Various facts may be considered in determining the existence of malice. Evidence of ill feeling, unfriendly relations, and trouble between accused and the victim of an offense, and evidence concerning the conduct and sayings of the accused shortly before and after the offense was committed, are admissible for such purpose.

" * * * Wharton's Criminal Evidence, Sec. 165, p. 320.

As stated in the above quotations, "malice" is many things. Herein, the defendant pleaded a qualified privilege, and the State, as plaintiff, assumed the burden of proving malice. In offering the present testimony to which objection was raised, the State was not concerned with prior or subsequent defamations; it was merely trying to show by similar statements the malice it had previously alleged with respect to the Bill of Information. In his Per Curiam to Bill of Exceptions No. 8, the trial judge pertinently stated:

> "In an attempt to prove malice it is impossible to probe the heart or mind of the defendant to ascertain whether or not there was malice, hatred, ill will or enmity or a wanton desire to injure, but the best proof of that state of mind is what he says and does with reference thereto, both before and after the defamatory statement is published if it be in connection with the defamation charged."

We agree with the trial judge that intent is involved in malice. In order to show intent, evidence is admissible of similar acts, independent of the act charged as crime in the Information, for though intent is a question of fact, it need not be proven as a fact, it may be inferred from the circumstances of the transaction. L.S.A.-R.S. 15:445.

> " * * * 'Other words than those laid in the petition, and spoken at other times, but within one year before the inception of the suit, may be given in evidence, for the purpose of showing malice in the defendant.'" Kendrick v. Kemp, 6 Mart. (N.S.) 500.

Under Relevancy, in Jones on Evidence, Civil and Criminal, Fifth Edition, Vol. 1, Sec. 159, p. 285, it is well stated:

> "The generally recognized rule is that 'When there is a question whether a person said or did something, the fact that he said or did something of the same sort on a different occasion may be proved, if it shows the existence on the occasion in question of any intention, knowledge, good or bad faith, malice or other state of mind, or of any state of body or bodily feeling, the existence of which is in issue or is deemed to be relevant to the issue; but such acts or words may not be proved merely in order to show that the person so acting or speaking was likely on the occasion in question to act in a similar manner.' " See, 53 C.J.S. Libel and Slander, Sec. 214(b), p. 323.

Because the trial judge, the State, and the defense were concerned with malice in the instant prosecution, we find that the trial judge properly admitted the testimony, supra, to which counsel for the defendant objected and made the basis of these bills.

Bills of Exceptions Nos. 6, 8, 9, and 11, are without merit.

Bills of Exceptions Nos. 12, 13, and 14 are not a part of the record, and they are not argued in the State's brief nor in the defendant's brief. We conclude that they have been abandoned.

Bills of Exceptions Nos. 10, 15, 16, and 17 will be discussed jointly; the matters therein involved are similar.

Bill of Exceptions No. 10 was reserved when Malcolm V. O'Hara, Judge, Section "A", Criminal District Court, was asked the following question, "As a result of the statement made by Mr. Garrison that I referred to, have you been affected in any way?" and he responded, "Well, I am going to have to answer that this way: Naturally, being in public office and having held public office for a number of years, I know a number of people, and the impression that I get from the people who discuss this matter with me—it is done in the following ways: People jokingly ask me if it is true that we get all these vacations, whether or not I am a sacred cow, or whether I am influenced by racketeers. It is no one person or nothing specific; it is a cumulative sort of a thing done in a joking sort of manner, but the one thing—my one impression out of the thing, if this is admissible—is that the bench, the criminal bench, seems to be getting the worst of public opinion, that the bench has suffered to some extent as a result of it, but nobody has hit me or threatened me or anything like that."

Objection to the above testimony was predicated on the grounds that it was based on impression and on hearsay. In admitting this testimony the trial court stated that it was "allowing the evidence to stand solely for the purpose of showing whether there was any reaction of the public, without the details of the

reaction, if there was any reaction of the public to the public article such as it would bring it within the intendment and the definition of defamation as set forth in the Revised Statutes, Title 14, Section 47, and restricting it to that. * * *"

Bill of Exceptions No. 15 was reserved when Shirley G. Wimberly, Judge, Section "G", Criminal District Court, was permitted to give the following testimony:

> "Q. Judge, the statement that Mr. Garrison made, has it subjected you to ridicule?
> "A. Yes, it has.
> "Q. Would you tell the Court how?
> "A. Well, I have received many telephone calls of derision."

The objection to the foregoing testimony was based on the ground that it was strictly hearsay. The ruling of the trial court was as follows:

> "The Court rules that the testimony is admissible, that there has been a public reaction by reason of the alleged defamatory statement. There wou'd be no other way of showing that the publication alleged to be defamatory and exposed the person claimed to be defamed to hatred, contempt or ridicule or to deprive him of the benefit of public confidence or social intercourse, as provided in the Revised Statutes, Title 14, Section 47, dealing with defamation and the subsequent articles on the same subject. The Court rules at this time that what was said to the witness would be hearsay evidence but the fact that a statement

> was made to him would not be hearsay evidence if the statement itself is not in evidence, but there is no way to show otherwise that he has been subjected to this injury or to defamation, other than the fact that there was a communication to him showing the public pulse or the public reaction to the statement that was made.***"

Bill of Exceptions No. 16 was reserved when Oliver Paul Schulingkamp, Judge, Section "F", Criminal District Court, was permitted to answer the following question, which he answered affirmatively:

> "Since the publication of this statement by Mr. Garrison about the Judges, have you been subjected to ridicule, embarrassment and so forth as the result of the publications of said article?"

The objection to this question was based on the grounds that it would be purely speculation for the witness to state facts in answer to the question, and that his response would be purely his impression and thus hearsay.

The trial judge's ruling with respect to Bill of Exceptions No. 16 was similar to that given to Bills of Exceptions Nos. 10 and 15.

Bill of Exceptions No. 17 was reserved when Thomas M. Brahney, Jr., Judge, Division "D", Criminal District Court, was permitted to testify as to whether he had been subjected to hatred, contempt, and ridicule as a result of the publication of November 2, 1962.

The objection to the question was based on the ground that the witness would not be in a position to know, except in his own opinion, whether anything that occurred to him after the alleged statement of Mr. Garrison was actually due to the statement. It was contended that the testimony would be irrelevant, immaterial, and not pertinent to the case. The trial judge gave the following ruling with respect to the objection:

"The Court is of the opinion that the evidence is admissible because there is no other way to show that he has been subjected to any hatred, contempt and ridicule and deprived him of the confidence or social intercourse, as stated in the statutory language, as stated in Revised Statutes Title 14, Section 47, within the intentment of that statute. He would be the only one who might or might not know. If he said that he knows that he has been subjected, I think he has a right to testify to that fact as to whether or not he has."

In this Court defendant contends that the trial judge's rulings supra, which he incorporated in his per curiams to the instant bills, were a violation of LSA-R.S. 15:434 which provides that hearsay evidence is admissible, except as otherwise provided in the Code of Criminal Procedure.

We agree with the reasoning of the trial judge to the effect that when a person has been defamed, he has been exposed to hatred, contempt or ridicule

(LSA-R.S. 14:47), and that the person's testimony with respect to such exposure is proof of an essential ingredient of the crime charged—Defamation—and is not hearsay.

We conclude that the testimony of each of the four judges was not hearsay; it was given to prove an ingredient of the offense herein charged and alleged. The trial judge has correctly stated the law in his rulings, and we find no abuse of his discretion.

Bills of Exceptions Nos. 10, 15, 16, and 17, are without merit.

Bill of Exceptions No. 18 was reserved when Joseph I. Giarrusso, Superintendent of the New Orleans Police Department, a witness called on behalf of the State, was permitted to answer the following question:

> "Q. Has the District Attorney called upon you for any more help with reference to the vice investigation?
> "A. No, sir, he has not."

The ground of objection was that the question was misleading and involved matters not herein concerned.

We do not find that the question was misleading. The following statement of the trial judge reflects his reason for admitting the testimony and shows that he committed no abuse of discretion:

> "At this time, the Court will state that it appears that one of the triggering causes of the

giving of the statement on November 2, 1962 by Mr. Garrison to the press, on which this charge of defamation was made, was that this arose by reason of a dispute as to the investigations to be made and the right for the investigation to be paid for by the District Attorney. Throughout the record there have been, without objection, discussions of whether or not the last paragraph—I believe it is the last paragraph of Title 15, Section 571.11 —as to the disposition of fines and forfeitures, concerning the disposition to be made and the right to the use thereof by the District Attorney of Orleans Parish. That has gone on throughout the trial of this case.

"There has been injected into this case, without objection, the question as to whether or not that paragraph of that particular act, which is an amendatory act, is unconstitutional, is violative of the constitutional provisions with reference to the Charter of the City of New Orleans, in which it was the contention of the Judges, and so testified to by them without objection, that they considered it unconstitutional for the reason that the police powers of the City of New Orleans were vested solely in the Police Department under the Home Rule Charter and under the constitutional provisions with reference to the Charter of the City of New Orleans. Therefore, the Court considers that it is very vital to a correct consideration of this as to whether or not this Defendant might or might not have called upon the City of New Orleans for additional help in addition to the police which were assigned

to him, and I believe that there is no dispute that at least 12 policemen of his own choosing were assigned to his office at his request. That is not disputed. Therefore, the Court is of the opinion that it is perfectly permissible to show whether or not the District Attorney at any time called upon the Police Department of the City of New Orleans for additional help.***"

Bill of Exceptions No. 18 is without merit.

Bill of Exceptions No. 19 is neither made a part of the record nor argued in brief. We consider that it has been abandoned.

Bill of Exceptions No. 20 was reserved when the trial judge rejected Proposition of Law No. Eleven. Counsel for the defendant presented the charge to the court before argument in the same fashion as a charge would have been presented had the case been tried by a jury; it recited:

"Publications made in the discharge of a public duty under authority of law are privileged. Burdick, Law of Crime, v 3, p. 166, sec. 795; see Deshotel v Thistlethwaite 240 La. 12, 121 So.2d 222. In this Court counsel for the defendant states:

"Defense counsel objected to the rejection of Proposition of Law No. 11 for the reason that the testimony of all of the complaining witnesses shows that Mr. Garrison's actions in this case arose directly out of his duties as

District Attorney for the Parish of Orleans; that this is factually supported by all of the testimony in the entire record; that he was discharging a public duty when this controversy arose; and further that he has the duty, as a matter of law, to inform the public on the conduct of his office, and if he is thwarted in the operation and conduct of his office, then he has the duty to inform the public why he is being thwarted.***"

Section 795 of the Law of Crime, William L. Burdick, p. 165, recites:

"There are some exceptions to the general common law rule that written and published defamation is criminally libelous even if it is true, since certain occasions are privileged on the ground of public interest and policy. Privileged occasions are either absolute or qualified. They are absolute when the law protects them with absolute immunity from any prosecution, either civil or criminal, although the publication may be knowingly false and with express malice. Absolute privilege is limited, however, to proceedings in which the public service and the administration of justice require absolute freedom of expression, regardless of truth, such as legislative and judicial proceedings, matters involving military affairs, and publications made in the discharge of public duty under authority of law, or made to the heads of departments of the state. The law regards these occasions as absolutely privileged since they are of such public importance that the utmost freedom of expression,

spoken or written, is deemed necessary for those whose duty it is to take part in them, regardless of the possible incidental defamation of any individual."

In Deshotel v. Thistlethwaite, supra, Deshotel, an attorney, brought suit against Thistlethwaite, Editor and Publisher of the Daily World Newspaper, for damages allegedly resulting from defamatory remarks made by Thistlethwaite in a television appearance. Thistlethwaite's defense of truth was found to have no merit. This Court then considered his alternative defense of fair comment and criticism alleged to be enjoyed as a qualified privilege; it held:

"The law relied on here by appellant is incorrectly stated, and the cases cited are for the most part inapposite, as statements made relative to the action of a candidate for public office are not, under Louisiana law, qualifiedly privileged even though false.***

"The cases relied on by counsel for Thistlethwaite in connection with his argument that even false statements about public officials are privileged***are easily distinguishable. They deal with the conditional privilege which shields the statements of one who has a special duty to speak. See Prosser, Law of Torts (2d ed. 1955) pp. 614-617. *To be actionable such statements must have been made maliciously*, with knowledge of their falsity.*** And although it can be argued that appellant's position in the case at bar derives some support from language appearing in our decision in

> Flanagan v Nicholson Publishing Company, 137 La. 588, 68 So. 964, L.R.S. 1917E, 510, this court has pointed out in subsequent decisions that the Nicholson case is only authority for the proposition that Louisiana recognizes the doctrine of qualified privilege respecting fair comment and criticism of public officers and men in public life, but that 'the privilege does not extend to the publication of false statements of fact concerning public officers.' Martin v Markley 202 La. 2?1, 11 So.2d 593, 594; Kennedy v Item Co. 213 La. 347, 34 So.2d 886." (Emphasis ours.)

In rejecting the Proposition of Law, supra, the trial court found that it had no application to the facts of this case and was not a full and correct statement of the law; in its per curiam it stated:

> "***It was further rejected for the reason that it would require an extended qualification, explanation and limitation if it were applicable. Further, the statement was incomplete, and under these circumstances the court was not required to charge this. LSA-R.S. 15:390,[13] and cases thereunder.
>
> "Further, it was rejected as not a complete and correct statement of the complete ruling in the case of Deshotel v Thistlethwaite, cited."

[13] "The prosecution and the defense have each the right to present to the court, before the argument has begun, any written charge or charges, and request that the same be given. Except as otherwise provided herein, the judge must give every such requested charge that is wholly correct and wholly pertinent, unless the matter contained in such charge have been already given, or unless such charge require qualification, limitation or explanation." LSA-R.S. 15:390.

After reading the *Deshotel* case, *supra*, we agree with the finding of the trial judge herein that the Proposition of Law does not contain the complete and correct holding of the case.

It is to be noted that the defendant relied on privilege, and the State contended that the expression of the defendant constituted malice in law and also malice in fact. Malice is presumed where a non-privileged publication or expression is false (LSA-R.S. 14:48); where a qualified privilege exists, malice must be proved (LSA-R.S. 14:49). With respect to the statement from Burdick, supra, the trial judge correctly found:

> "This was a Proposition of law taken out of context of the author and was subject to qualification, explanation and limitation in a consideration of the whole of the article. In the discharge of a public duty under authority of law, or a public officer in informing the public of the conduct of his office, it should be that the publication would be true in the discharge of a public duty, asserting legitimate reasons, rather than a false defamatory statement imputing wrongdoing to another public officer without any facts to justify it.***" See, State v Turner, 228 La. 202, 81 So.2d 861.

The trial judge made the following factual finding:

> "I did not find that the statement made by the defendant was a publication made in the discharge of a public duty altogether, but was a defamatory statement of fact maliciously

made, and not a comment alone upon admitted facts; but he went beyond that and made statements of fact which were false.

"Further, I did not find that this charge was wholly correct and wholly pertinent to the facts in this case. Also, I found that it would require an even more extended qualification, explanation and limitation if it were applicable."

Under his factual finding, the trial judge was correct in rejecting Proposition of Law No. Eleven.

Bill of Exceptions No. 20 is without merit.

Bills of Exceptions Nos. 21, 22, and 23 will be jointly discussed.

Bill of Exceptions No. 21 was reserved when the trial court qualified Proposition of Law No. Thirteen, which had been submitted to it prior to argument; it recites:

"Article 1, Section 3, of the Louisiana Constitution and the First Amendment to the United States Constitution require that persons be given the opportunity to inform the community of both sides of an issue of public interest. The purpose of these constitutional guarantees is to protect parties in the free publication of matters of public concern, to secure their right to a free discussion of public events and public measures, and to enable every citizen at any time to bring the government and any

person in authority to the bar of public opinion by any just criticism upon their conduct in the exercise of the authority which the people have conferred upon them. Cooley's 2 Constitutional Limitations (8th ed. 1927) 885; Wood v Georgia, 370 U.S. 375."

The trial court qualified Proposition of Law No. Thirteen by pointing out that Article I, Section 3, of the Louisiana Constitution of 1921, was not a part of the holding in the case of Wood v. Georgia, supra. This section provides that a person is responsible for the abuse of liberty of speech or of the press.

In this Court defendant avers in brief:

"The accused, through his counsel, excepted on the ground that Wood v Georgia dealt with freedom of speech, and it is immaterial whether freedom of speech is challenged through the medium of contempt proceedings or criminal defamation proceedings—if freedom of speech protects an individual, it protects him against all challenges.***"

Bill of Exceptions No. 22 was reserved when the trial court rejected Proposition of Law No. Fourteen, which recites:

"The role that elected officials play in our society makes it imperative that they be allowed freely to express themselves on matters of current public importance. The First Amendment to the United States Constitution affords an absolute privilege to an elected official

who expresses himself on such matters. Wood v Georgia, 370 U.S. 375."

The trial judge rejected the Proposition, because he "did not find that the Constitution of the United States or the Constitution of the State of Louisiana grants an absolute privilege to make any statement, particularly a false defamatory or derogatory statement, simply because a person is an elected official, in commenting on matters of public importance, and in so doing, make unsubstantiated and false statements of fact regarding other persons, rather than commenting upon admitted facts, and the party defamed would have no legal remedy."

In this Court defendant avers:

"Defense counsel excepted to this rejection, pointing out that Article 1, Section 3, of the Louisiana Constitution cannot bar the accused's rights under the First Amendment to the United States Constitution, and further that the record in this case disclosed that Mr. Garrison was an elected official with a duty to the people of the Parish of Orleans, and that thus Proposition of Law No. 14 is pertinent in this case.***"

Bill of Exceptions No. 23 was reserved when the trial court rejected Proposition of Law No. Sixteen which recites:

"Men are entitled to speak as they please on matters vital to them; errors in judgment or unsubstantiated opinions may be exposed,

but not through punishment for the expression. Under our system of government, counter-argument and education are the weapons available to expose these matters, not abridgment of the right of free speech. Wood v. Georgia, 370 U.S. 375."

After differentiating the instant prosecution from Wood v. Georgia, supra, the trial court found:

"It goes without saying that principles of law are applied to the facts in the case, and I did not find this wholly correct or wholly pertinent to the facts in this case; particularly that it was a partial statement taken out of context on an entirely different factual situation."

Defendant avers in this Court:

"Through counsel, the accused objected, stating that if the cloak of freedom of speech is present, it protects the accused in this case from all challenges to that freedom, including charges of criminal defamation, and that the rights guaranteed to the accused by the United States Constitution cannot be abridged by the law, jurisprudence, or Constitution of the State of Louisiana. * * * "

We find no merit in Bills of Exceptions Nos. 21, 22, and 23. Our reasons for such finding are set forth in our lengthy discussion of Bill of Exceptions No. 3, which in part pertained to similar matters. The trial judge was correct in his rulings; his reasoning in dis-

tinguishing Wood v. Georgia, supra, from the instant prosecution in his per curiams to the instant bills is very similar to that of this Court in Bill of Exceptions No. 3. He did not abuse his discretion nor commit error with respect to the provisions of LSA-R.S. 15:390, supra.

Bills of Exceptions Nos. 21, 22 and 23, are without merit.

Bill of Exceptions No. 24 was reserved when the trial court qualified Proposition of Law No. Seventeen, which recited:

> "Actual malice cannot be inferred from any qualifiedly privileged statement. It must be proven by extrinsic evidence of hatred, ill will or wanton desire to injure on the part of the accused."

The trial judge qualified the Proposition by the following statement from State v. Lambert, 188 La. 968, 178 So. 508:

> "If the privilege is only qualified the onus lies on the plaintiff in a civil suit or on the State in a criminal prosecution of proving actual malice. This may be done either by extrinsic evidence of personal ill feeling or by intrinsic evidence, such as the exaggerated language, the mode and extent of the publication, and other matters in excess of the privilege. Odgers on Libel and Slander, 2d Ed., p. 438."

In his per curiam to the instant bill, the trial judge sets forth, as follows, his further reasons for qualifying the Proposition:

> "My reason for qualifying it was that my impression was that it sought to restrict the proof of actual malice to extrinsic evidence only, of hatred, ill will or wanton desire to injure on the part of the accused.
>
> "Actual malice is susceptible to other definitions also and could be proven by extrinsic evidence under these definitions, and the State is not restricted in proving actual malice by any other legal means.
>
> "It was also qualified by the provisions of LSA-R.S. 14:49, which provides that the State must prove actual malice, whether the statement is true or false, under the provisions of said article.
>
> "Counsel for defendant * * * made the statement as to how he appreciated the ruling in that the effect was that the State must prove malice in cases only involving qualified privilege. I do not see how this appreciation was arrived at as I was discussing nothing more than the law of actual malice and a qualifiedly privileged statement as requested by counsel.
>
> "Counsel has in this bill of exception set up an additional explanation after ruling, stating his reasons therefor the proof of malice in all

cases. This question could not be raised after the requested charge was given because there was no request made of the Court for a charge as to the law on a non-qualifiedly privileged statement or legal malice. Therefore, counsel has set up in this bill of exception the question of legal malice where there is no qualified privileged statement, which was not requested of the court in the charge; and, of course, this additional reason asserted after the court has ruled on the proposition of law submitted does not make it a proposition of law or a charge that should have been passed upon and should form no part of the bill of exception. It is a recognized principle of law that a judge is presumed to know the law and does not have to charge himself on any question of law not requested in a misdemeanor case tried by the judge alone.

"The requested charge was granted but was qualified for the reason that it was not a complete statement of law of proof of actual malice and was not a wholly correct statement of the law as applied to the facts in this case."

In the present bill of exceptions, counsel for the defendant avers that he objected to the rulings of the trial judge for the reason "that the State must prove malice in all cases of criminal defamation, whether a qualified privilege exists or not; that in cases of qualified privilege the State must prove actual malice; in cases where the qualified privilege does not exist, the

State must prove legal malice. The State must carry the burden of proof of malice in all cases of criminal defamation."

In this Court, counsel for the defendant sets forth in brief:

> "The basis of the defense's exception here is that the State must prove malice in all cases of criminal defamation, not just in cases involving a qualified privilege. * * * In cases of qualified privilege the State must prove actual malice; in cases where the qualified privilege does not exist, the State must prove legal malice. The State must carry the burden of proof of malice in all defamation cases, not just in those defamation cases in which the defendant has a privilege.
>
> "The above, and the trial judge's per curiam to this bill, * * * are good examples of the confusion which existed in the trial judge's mind about what the State had to do in this case to prove malice. As we have already stressed in this brief, the State introduced no evidence to show hatred, ill will or a wanton desire to injure the Judges on the part of the accused. What the State did introduce in evidence at the trial, over the objection of defense counsel, were several other privileged statements of the accused, also made, like the November 2 statements, in a reasonable belief of their truth and without malice. As he tells us in his Reasons for Judgment in this matter, the trial judge bases his holding of malice on

> Garrison's part on these other privileged statements. According to the trial judge, these other privileged statements 'show the state of mind that the Defendant had on and from the date of the original defamation up to and including the date the last one was issued and convince me that it was a steadfast position of ill will and enmity arising out of a dislike of the fact that the Judges refused to sign certain motions for him."

As stated throughout this opinion, the defendant pleaded "Qualified privilege", and the State contended that the statement of the defendant constituted malice in law and malice in fact. LSA-R.S. 14:49 provides that actual malice must be proved where a qualified privilege exists under certain enumerated circumstances; the statute does not restrict the proof of malice to extrinsic evidence. We find no prohibition in the law or in the jurisprudence which forbids the use of intrinsic evidence in a prosecution such as the instant one; neither do we find a limitation or restriction. The trial judge was therefore correct in qualifying Proposition of Law No. Seventeen. (See our discussion of Bill of Exceptions No. 6, 8, 9, and 11, supra.) Cf Miller Smith and Champagne v. Capital City Press, 142 So. 2d 462; Jenkins v. D X Sunray Oil Co., 297 F. 2d 244.

The trial judge was correct in stating that after he had given his ruling to Proposition of Law No. Seventeen, he could not be compelled to expand to matters not requested in the Proposition—the proof required in *all* cases of defamation.

Bill of Exceptions No. 24 is without merit.

Bill of Exceptions No. 25 was reserved to the ruling of the trial judge in denying defendant's Motion for a New Trial.

The Motion reurges all of the objections previously raised in Bills of Exceptions Nos. 1 through 24, and with respect to these matters nothing new is presented for our consideration. We have answered the arguments in discussing the bills, all of which we have found to be without merit.

The Motion avers that there is no evidence in the record to support the judgment of the trial court. We have read the transcript of testimony (consisting of 741 pages), as well as the numerous pleadings hereinbefore discussed; we have also read the defendant's brief (94 pages) and the State's brief (43 pages), and we find that there is evidence to support the judgment. Where there is some evidence to sustain the conviction, this Court cannot pass upon the sufficiency thereof. State v. Copling, 242 La. 199, 135 So. 2d 271; State v. McDonell, 208 La. 602, 23 So. 2d 230. We are constrained to remark here that the length of this opinion is due to the extensiveness of the pleadings and the voluminous record attached; we are also impelled to state that the learned trial judge and able counsel for both the State and the defendant have treated the matter with dexterity and completeness.

Counsel for the defendant argues in brief that there is not one scintilla of evidence to indicate that the ac-

cused made the statement herein involved without a reasonable belief of its truth. This contention would have to do with malice, which we have covered in our discussion of Bills of Exceptions Nos. 6, 8, 9, 11 and 24.[14] Cf. State vs. Bienvenu, 36 La. Ann. 378.

Bill of Exceptions No. 25 is without merit.

Bill of Exceptions No. 26 was reserved when the trial court denied defendant's Motion in Arrest of Judgment.

The Motion averred "that the entire proceedings against the defendant are null and void for the reasons that the statutes under which the bill of information is laid is unconstitutional and null and void and in violation of the First Amendment of the United States Constitution as a restriction on the freedom of speech."

We find no merit in the instant bill. In our disposition of Bill of Exceptions No. 3, we found LSA-R.S. 14:47-50

[14] It is appropriate to here observe that if defendant believed the statements he made, he could have pursued the following legal channels open to him:
(1) Legal proceedings to compel the judges to sign the order.
(2) Charging the judges with a violation of the "Deadhead" statute. LSA-R.S. 14:138.
(3) Conducting an open hearing under the provisions of LSA-R.S. 15:17.1 concerning the alleged actions of the judges and whether or not there was a question of racketeer influences on the eight judges.
(4) Institution of removal from office proceedings under the provisions of Art. IX, Secs. 1 and 5, La. Const. of 1921.
(5) Availing himself of the services of the Judicial Council of the Supreme Court of Louisiana as provided by its Rule XX. Sec. 6. West's LSA, Vol. 8, Supplement for use during 1963.
The record reflects that defendant did not avail himself of the foregoing legal channels.

constitutional and not violative of the First Amendment to the United States Constitution.

Bill of Exceptions No. 26 is without merit.

For the reasons assigned, the conviction and sentence are affirmed.

HAMITER, J. concurs in the result.

Opinion of the Criminal District Court

As was generally known, I have been called upon to try and decide this case under appointment by the Supreme Court of the State of Louisiana. As I stated when I first appeared in this case, I am not here of my own volition, but rather as a duty, to hear and decide the issues of this case under my oath of office as a District Judge of the State of Louisiana. I am sure that there is no one that would envy me my position in this matter. As I stated at the beginning of this trial that I would try this case as expeditiously and as judiciously as possible and would seek to arrive at a fair, just, and impartial verdict. I have heard the evidence in this case, and since the trial I have had occasion to read the evidence carefully. I have devoted many hours of study to the legal principles that are involved in connection with the evidence, have heard the oral arguments, and am now ready to render a decision in the matter, which I believe to be the only decision that I could conscientiously reach, giving a thorough consideration to the evidence adduced from the witness stand, or want of evidence and the legal principles involved. That

is my duty under the law, to so decide fairly and impartially from this standpoint, and from this alone, disregarding all else.

In a consideration of this case, it will be my duty to treat it as any other case, regardless of the parties or the issues involved. In so doing, it becomes necessary for me to make comments upon certain facts and certain principles of law, and I would like for it to be understood that in so doing I am making those statements impersonally and dispassionately, without any intention of doing any injury to any of the witnesses or the Defendant.

In discussing the facts and the application of the law, the Court must necessarily give its interpretation of its appreciation of the facts and the law. Therefore, I trust that anything that I may say will be taken in that light, and not as a criticism of any of the witnesses, who may have appeared in this case, or of officials or of the Defendant.

It will be my purpose at this time to give my impression of the highlights of the testimony that would be material, relevant, and would assist the Court in the correct determination of the issues involved.

There is in the record the testimony of several reporters for the New Orleans newspapers, TV stations, and so forth, who testified in this case, particularly with reference to what was said by the Defendant herein at the time of the making of the statement

which the State alleges is defamatory. Also in the record is the testimony of several reporters as to what was said subsequent thereto as well as other statements made on November 2, 1962, which was the day on which the alleged defamatory statement was given to the press. Most of what was said would not be material in the determination of the issues, but some of it is material to determine the state of mind of the Defendant at that time and the question of actual malice.

On the date of the alleged defamatory statement, Mr. Garrison came into the courthouse, as I appreciate it, with Pershing Gervais, and learned that there had been an en banc meeting of the Judges. He was interrogated by Mr. Bert Hyde, reporter, as to whether or not he desired to make a statement, and later on, in the presence of Mr. Gervais and others, he issued the statement which the State alleges to be defamatory. Also, in a statement to Mr. R. J. Dempsey of the New Orleans States-Item, the Defendant made the statement that he was going to bring these racketeering influences on the Judges before the Grand Jury. However, this was never done, according to the evidence.

Also on the same date of November 2, 1962, on which the alleged defamatory statement was made, Mr. Bill Reed, News Director for WWL-TV, I believe, interviewed Mr. Garrison—on the date of the alleged defamatory statement as well as on other dates—and the statement was made by the Defendant to Mr. Reed and subsequently made public. Mr. Reed testified,

when questioned about the responsibility of fixing cases for trial, that Mr. Garrison made the statement, "To be charitable, I would call it a lie," referring to the Judges fixing the responsibility on him. Further on that date when it was called to his attention that the Judges had pointed out that they thought it would have been much better had Mr. Garrison met with them, his reply was, "They know, I believe, perfectly well it would have been a waste of time, that the only way to get these sacred cows back to work is by public reaction." Also, when questioned about the number of days vacation per year taken by the Judges, Defendant referred to it in the following language: "The only way to refer to it is as a racket," and that the only way the public would find out about it was for him to bring it to public notice. He further testified that he did not notice anything antagonistic by the Defendant, but that the Defendant at that time did not appear to be calm. Of course, the alleged defamatory statement is in the record, that was given to the press, and there is no reason to comment upon it until later in this opinion. It is not denied that it was given and published and given wide circulation.

It might also be noticed here that some of the statements made at different times were objected to by the Defendant for the reason that they were not admissible. They were admitted by the Court for, and restricted to, the purpose of showing actual malice. However, there was admitted into the record, by agreement of Counsel, and so stipulated a copy of a speech made by the Defendant at the St. Anthony Auditorium in

New Orleans on December 5, 1962. This speech was taken verbatim by Mrs. Theresa E. Shean, an official court reporter, and at the request of Counsel for the Defendant, it was read into the record.

In this speech, Mr. Garrison defends his position under the doctrine and right of freedom of speech. He points out the crowded conditions of the Parish Prison, that the Judges were derelict in taking too many holidays, or words to that effect. He makes the following statement:

> "I will be standing up and telling the people of New Orleans every time I encounter trouble like this from a public official. I have to because I have no organization to turn to. I have no allies because the other officials are the 'association of armed robbers.'"

He also referred to the expenditure of funds, which will be hereinafter discussed in connection with the discussion of the law and the provisions of LSA-R.S. 15:571.11.

There were other parties and reporters who testified in this case, but I can see that no useful purpose could be served in exhaustively reviewing this line of testimony further.

As a matter of testimony, there is the evidence in the record of the eight Criminal District Court Judges alleged to have been defamed, as well as the testimony of Judge William J. O'Hara, retired.

The record herein is voluminous, and it would not be feasible or expedient to try to explain everything that each witness might have said. Rather it will be treated as a whole.

It will be my purpose at this time to comment only as to the highlights of the testimony of each of the Judges of the Criminal District Court, who testified in this case, in the order of their appearance on the witness stand.

Judge Malcolm V. O'Hara testified that the statements made in the alleged defamatory article were not true, that he had never told the District Attorney how to run his office or sent him any messages. He also testified that the District Attorney handles the setting of cases. Testifying further, he says that the alleged defamatory statement had subjected him to cumulated ridicule. He did not blame the crowded conditions of the Parish Prison on the Court, as a fault of the Court or of the District Attorney, testifying that the building housing the prisoners was built 35 years ago for a certain number of people, and population-wise it was now causing the crowded conditions. He further testified that a large majority of the people of New Orleans wanted vice cleaned up and that there were very few holding contrary views. He also testified that he took office in September and had jury cases in November and December of 1962 and in January of 1963, and disposed of 150 cases. He further testified that he supported Mr. Garrison for the office of District Attorney, which he now holds.

The next witness on the stand was Judge William J. O'Hara, now retired after serving as Judge of the Criminal District Court for approximately 30 years. As I appreciate his evidence, the difficulty that triggered the differences between the District Attorney and the Judges arose by reason of an application of the District Attorney for approval of a bill for something like $985.00 for drapes and carpets for the District Attorney's office. Judge O'Hara asked for proof of the value of the expenditures requested in the motion by the District Attorney, which he says Mr. Garrison agreed to get for him. This was never furnished. Judge O'Hara went on vacation, and when he returned, he understood that Judge Wimberly had signed the motion. I gather from the evidence that, although Judge O'Hara had never promised to sign the order, that the District Attorney represented to Judge Wimberly that he had done so, and when Judge O'Hara returned from vacation, Judge Wimberly had signed the order. It was then that the Judges invoked a rule at an en banc session to require that all motions for expenditures out of the Fines and Forfeitures must be signed by five out of the eight judges, three on emergency matters. He further testified that he knows of no racketeering influence on him and that no messages or directives were ever sent to the District Attorney by him on how to run his office; that there was no use of vacations as a racket, and that he strongly stands for the suppression of vice in New Orleans. Further his testimony is to the effect that the crowded condition of the docket was due to the inadequacy of the District Attorney's office. I do not believe the im-

port of this casts any reflection on the Defendant herein, for the reason that Judge O'Hara's testimony led me to believe that he intended to say that the system employed resulted in the backlog of cases, rather than who was the District Attorney, citing the fact that during the administration of Mr. Hubert as District Attorney, there was a different system used in processing the cases when they first came into the office and later, which resulted in a clean-up of the docket. However, Mr. Hubert's successor had resorted to the old system, which is still used by the Defendant, and this resulted in the backlog of cases. Judge O'Hara also testified that the statement of the District Attorney with reference to racketeering influences was also false.

It might be further noted that Judge O'Hara was very complimentary to the Defendant as District Attorney as to the clean-up on vice, saying, "Now, I am not saying that Mr. Garrison did not do a very good job on Bourbon Street. He did a very good job . . ." However, he disagreed with the authority of the Defendant to pursue the investigation in the manner he was using, as being in conflict with the provisions of Section 16 of Act 301 of the Legislature of 1946, providing for police powers in the City of New Orleans. He further testified that if there was any segment of the population of New Orleans in favor of B-drinking and prostitution and so forth, it was only an insignificant fraction, and that this segment had never made any effort to pressure the judges.

The next witness for the State was Judge Shirley Wimberly, who testified that the statement published on November 2, 1962, by Mr. Garrison, which is the alleged defamatory statement, was not true; that he had never sent the District Attorney any statements or directives on how to run his office and he was never influenced by racketeering influences. He further testified that he signed the disputed motion for the Defendant with assurance from the Defendant that Judge O'Hara had agreed to it. Later he learned that he, Judge O'Hara, did not, and Defendant admitted that to the Judges in the en banc session.

I will interpolate here that Judge O'Hara might have agreed to sign it in reference to, qualified to, the supporting vouchers and so forth, but would not sign it without it.

This led to the invoking of the so-called five-out-of-eight rule, which meant that five of the eight Judges of the Criminal District Court would have to sign any motion for approval of funds for Defendant Garrison, three on the question of emergencies. He also questioned the validity of the investigations in the manner performed as being contrary to the provisions of Section 16, Act 301 of 1946, as to the police powers of the City of New Orleans. His testimony also sets forth that from May 7 to September 10 there were approved for the Defendant some 73 motions, totalling $19,284.56 in expenditures. On October 26, 1962, the Judges approved 80 items, totalling $10,276.32, and since October 26, 1962, the Judges have approved 32 motions

amounting to $17,742.35, making a total amount of claims approved since May 7, 1962, of $47,303.23 for expenditures out of the funds for Fines and Forfeitures. I believe there was a claim—I don't remember exactly how much it was but it was somewhere in the neighborhood of $1,500.00—for undercover work that has not been approved, as he considered that Act 301 of 1946 prohibits anyone except the City Police of the City of New Orleans from exercising police powers within the City, and for other reasons. He further showed that in the items that were approved for Defendant Garrison, that the District Attorney's Office had purchased 12 chairs for the sum of $100.00 each, that he had purchased a microscope for $689.59, a camera for $157.00, two flags for $92.48, two plastic plants for $233.30, carpet for $231.75, a sofa for $199.00, and an overstuffed chair for $100.00.

The next witness called by the State was Judge Oliver P. Schulingkamp. The highlights of Judge Schulingkamp's testimony are that the alleged defamatory article of November 2, 1962, by Mr. Garrison, was not true; that he was never under the influence of any racketeering influences and never sent any messages to the Defendant on how to conduct his office. He further testified that the District Attorney sets the docket in different sections of the Court and that no complaints were made by the District Attorney about the assignment of cases. He further testified that it was his opinion that under the provisions of Act 301 of 1946, it is the law that only the Police could exercise police powers in New Orleans.

The next witness called by the State was Judge Edward A. Haggerty, Jr., who was one of the judges of the Criminal District Court. My appreciation of his testimony was that the alleged defamatory statement of November 2, 1962, by the Defendant was false; that he had never been influenced by racketeers and had never sent any messages or directives to the District Attorney on how to operate his office; further that the cases are assigned by the District Attorney for trial; further that in the campaign in which the Defendant, Mr. Garrison, had defeated Mr. Dowling for District Attorney, Mr. Garrison in his campaign speeches had particularly raised the question about the use of the funds authorized under the statute by the Dowling Administration, and that this was one of the main issues in the Dowling campaign. Further his testimony is that this raised a so-called red flag to the Judges and caused them to examine and consider the expenditures more carefully. Further his testimony is that he did not believe the statute authorizing the use of the funds in the manner used by the Defendant was constitutional and questioned the authority of the District Attorney to exercise police powers in the City of New Orleans in conflict with Act of the Legislature 301, 1946. He admitted that he had attended the party at which Mike Callia, who had been convicted of a crime, was host, but that, as Assistant District Attorney, he was the one who had prosecuted Mike Callia and that Judge Cocke was the one who had sentenced him to one year in the Parish Prison. His testimony further reveals that he voted for the Defendant for District Attorney, for the office which he now holds.

I might digress and say here that it is not the purpose of the law particularly to unduly punish a person as a criminal or to seek revenge for any infraction of the laws, but rather that the laws should be used as a deterrent to the party punished and others. The purpose of our laws is rather to seek to rehabilitate one who has paid his debt to society and seek to restore him to a responsible position of citizenship. It is not the American way of life to look down upon one who has been convicted of a minor crime, or, to use an ordinary expression, to kick him when he is down, but rather to seek to extend to him a helping hand when seeking to restore him to his rightful place in society. I am sure that we all have friends who have made errors in their way of life and might have been convicted of a minor crime.

The next witness called by the State was Judge Bernard J. Bagert, who testified that the jury trial days that were requested by the Defendant in his section were on Monday, Wednesday, and Thursday; further, that the statements made by the Defendant in the alleged defamatory statement on November 2, 1962, were untrue and false; that he worked practically every day, that he was not influenced by any racketeers, and that he never told the District Attorney how to run his office or sent him any message on it; further, that he had done nothing to block or restrict the District Attorney in his efforts to suppress vice. He was further of the opinion that the statute on fines and forfeitures is unconstitutional and in conflict with Act 301 of 1946. However, he said that he would sign

investigative warrants until the act was declared unconstitutional.

The next witness called by the State was Judge George P. Platt. Judge Platt testified that he was elected Judge of the City Court in 1920, in which capacity he served until 1936, when he was elected Judge of the Criminal District Court, and that he has served continuously as such since that time. He testified that the alleged defamatory statement of November 2, 1962, by Mr. Garrison was absolutely false, that he had never been influenced by racketeers.

Judge Platt presented to the Court at the conclusion of his testimony a silver scroll that was presented to him on January 28, 1954, by the New Orleans Bar Association, which stated:

> "Presented to the Honorable George P. Platt in recognition of distinguished and loyal service on the bench, by the New Orleans Bar Association."

The next witness called by the State was Judge Thomas M. Brahney, Jr., who testified that the alleged defamatory statement made by the Defendant on November 2, 1962, as published, was false; that he had never been influenced by racketeers; that he was not in favor of racketeers and never attempted to block any effort to suppress vice; that he was also of the opinion that the Act of 1960, which took the money from the General Fund of the City of New Orleans and put

it into the funds of the District Attorney, was a violation of the Home Rule Charter.

The next witness called by the State was Judge J. Bernard Cocke, who testified that the alleged defamatory statement made by the Defendant on November 2, 1962, was false; that he had never been influenced by racketeers, nor was he sympathetic towards them; that he had never sent any messages to the District Attorney on how to run his office and had never sought to block the investigations; that although the law required only three jury terms per year, during his 18 years of service he had had eight jury terms a year; that he contributed to the campaign of Mr. Garrison and worked for him, but that he had lost confidence in him when he employed Mr. Pershing Gervais as an investigator, whom he branded a thief, a grafter, a professional informer and an habitue of the places in the Quarter which he denounced. Under cross-examination, Judge Cocke admitted that in previous political campaigns very serious accusations had been made against him, which accused him of various and sundry acts of dishonorable conduct, but he had won his election by an overwhelming majority, proving that the people of New Orleans did not believe these accusations.

The next witness introduced by the State was Joseph I. Giarrusso, who is Superintendent of the New Orleans Police Department. He testified that 12 policemen had been assigned to the office of the District Attorney to work out of uniform; that the District

Attorney selected these men, who were paid by the City, and that they were good men; that the District Attorney had not had a meeting with the other police officers of the City of New Orleans.

This has been a tedious summation of my appreciation and deduction of the highlights of the testimony of some of the respective witnesses on behalf of the State on matters that I consider pertinent.

Further adding to the testimony, it will be noted that all of the judges that were questioned about it, testified that the alleged defamatory statement by the Defendant in November, 1962, had subjected them to contempt, hatred, and ridicule, and, in addition to the above, the Judges were forcefully and searchingly questioned by Counsel for the Defendant on cross-examination as to any connections that they might have with parties who had previously been tried for violation of the law, particularly with reference to releases on parole prior to making bond. Most, if not all, of the Judges admitted that they had paroled certain persons charged with crimes under the provisions of LSA-R.S., Title 15, Section 78, which they had a right to do. I believe from the evidence that in many of the cases the paroles were granted to respectable lawyers, who had guaranteed the appearance of those charged with a crime, in court for the purpose of making bond or trial, and to others whom the Judges in their judgment felt would be responsible persons even though the proof indicates that some of them have been convicted of crimes before.

Although there have been many witnesses summoned on behalf of the Defense, none of them were called to refute this evidence or prove the truth of the accusations made in the alleged defamatory statement. Article 19, Section 9, of the Constitution of the State of Louisiana provides that in all proceedings or indictments for libel, the truth thereof may be given in evidence. Therefore, the only evidence before this Court that was adduced from the witness stand is that introduced by the State, the highlights of which have been heretofore reflected.

As I appreciate and deduce from the evidence of this case, the Defendant in his campaign for District Attorney against Mr. Dowling had raised the issue of illegal use or misuse or extravagant use of funds. It appears from the evidence that the Judges, during Mr. Dowling's regime and previously, had not questioned these expenditures of the District Attorney very closely.

On cross-examination, Counsel for the Defendant in this case introduced several items which appeared to be rather expensive and extravagant expenditures during the previous administration. That was a matter within the discretion of the judges who signed the motion. It is not for me to comment on this action as the circumstances surrounding those are not before me. However, the dispute as to these expenditures during the Defendant's administration arose by reason of the fact that some of the Judges considered them as extravagant and excessive amounts being expended

without supporting proof. This matter finally came to a head by one item which the Defendant had sought to have approved by a motion, which I believe was drapes and carpets for his office. This expenditure was sought under the provisions of L.S.A.-R.S. 15:571.11, which provides as follows:

> "That all fines and forfeitures imposed in criminal cases—

this is a portion that applies to the Defendant in this case—

> "* * * * all fines and forfeitures imposed in criminal cases and prosecution by the Courts of Orleans Parish shall, upon collection, be paid to the District Attorney of Orleans Parish, who shall deposit same in a special account to be used in defraying the expenses of the Criminal Courts of the Parish, extradition, and such other expenses pertaining to the operation of the Criminal Courts of Orleans Parish and the office of the District Attorney of Orleans Parish as in his discretion may be necessary. Provided that any surplus remaining in said special account or fund on December 31 of each and every year shall be distributed as follows: One-half to be retained by the District Attorney of Orleans Parish to be used as hereinabove set forth, and the other half to be remitted to the City of New Orleans. No money shall be paid out of this fund except upon motion by the District Attorney of Orleans Parish and approval by a judge of the Criminal District Court of Orleans Parish. A copy of said

> motion must be served on the budget officer of the City of New Orleans 24 hours prior to approval thereof by the Judge. Said fund shall be annually audited by the Director of Finance of the City of New Orleans. * * *"

And then it recites the amendatory acts.

It will be seen by reading the provisions of this law that it pertains to the operation of the criminal courts and the office of the District Attorney of Orleans Parish, and it provides for the expenditure of funds for the operation of the criminal courts of Orleans Parish and the office of the District Attorney of Orleans Parish which, in his discretion, may be necessary. However, since the Judges of the Court have been approving these items, I do not see that I should comment on it, for the reason that it addresses itself to their discretion and their interpretation. The Act, however, provides that the motion should be approved by a judge of the Criminal District Court of Orleans Parish. Therefore, I believe the intendment of the Legislature in this matter was that a check be placed on the spending of this fund by requiring this to be done just as ordinary business vouchers or any other instrument might have to be signed by one person but is necessary to be countersigned by another to be valid. I can see that the Judges might have been provoked when the dispute arose in reference to the signing of the order which precipitated the controversy and the five-out-of-eight rule was adopted and invoked. However, I can also see that the District Attorney

could be provoked by the establishment of such a rule as the statute did not require five of the Judges to sign the order, although they might agree that no one judge would sign the motion unless five did so. This could have provoked the Defendant such as would give rise to a thought in his mind that he was being discriminated against. In other words, I can also imagine a situation where there might be four of the judges who would agree to—off the cuff agree to sign a motion and there would be four who would disapprove. Therefore, this would lead to a state where the District Attorney could not get his motion approved, although there might be four judges who would be willing to approve it. I do not believe that the Legislature contemplated this. It would also place an additional burden and hardship on him in having to go to five different judges to get the signatures whereas the Act only provides that it is necessary to have the signature of one judge. However, this would be subject to the discretion of the judge in approving the motion, and if, in fact, the District Attorney might have been provoked by this action, a relief in law was available to him to apply for a writ of mandamus by appropriate proceedings in a proper court. This remedy, in my opinion, the District Attorney should have resorted to. I am satisfied that he could have settled the matter in a proper manner in the proper courts of this state. As a matter of obervation. I will say that it is inadvisable at any time to make any statement if one is disturbed or excited or in anger or disappointed or under provocation. The Defendant should have resorted to the law, to the relief that the law granted him, and the matter

would have been settled long before this one way or the other without the necessity of this trial. Also, if he reasonably and honestly believed that the Judges were in fact influenced by racketeers or were subject to racketeering influences or guilty of any misconduct, there were several remedies under the law that were available to him to rectify this.

While on this question of expenditure of these funds and the construction of this statute, in the speech delivered on December 5, 1962, by the Defendant at St. Anthony's Auditorium, he made the statement about the fund from which he was expending, about the money that was secured from the fines and forfeitures, saying:

> "In that regard, this is not tax money. We have reduced our budget from the City voluntarily. We sent money back to the City. Fines and fees come from the bonding companies and this is what we have improved our office with. Secondly, this money *has to be spent* by December 31st, or we have to give some of it to the City. So we have gotten $60,000.00 and I conclude that this is the time to get the equipment that we need, and that's what we have been doing. So, if you hear anybody say that we are throwing money away, this is not true. This *has to be spent*. The law encourages the District Attorney to spend it so it won't be built up. We have about $40,000.00 and what we don't spend, will have to be given away. It's a practical matter. And my hands are still tied."

It is hard to envision the logic of this line of argument for the reason that one-half of the funds that would have been left at the end of the year would have gone to the City to be used for the benefit of the citizenry of New Orleans, and, as I view it, the statute was only to provide the District Attorney with funds necessary for the operation of his office officially.

As far as there is any evidence whatever before the Court, all of the Judges of the Criminal District Court when asked, who appeared in this case, have emphatically stated that the alleged defamatory statements were not true. All of them testified emphatically when asked that they had not been influenced in any respect by racketeers. All of them testified when asked that they had been subjected to hatred, contempt, and ridicule because of the statement.

The evidence does not convince me that the Judges were vacation-minded or that they were not willing to work during the time that they were supposed to under the law. Of course, the law provides that Saturday and Sunday in Orleans Parish shall be legal holidays, or a portion thereof, together with other legal holidays, as set out in the statute. There is also provided in the Constitution a vacation period. Among the duties and powers as set forth under the provisions of L.S.A.-R.S. 15:17, defining the duties of the District Attorney, the law provides in part, quoting only the first of it:

> "Subject to the supervision of the Attorney General, as hereinafter provided, the District

> Attorney shall have entire charge and control of every criminal prosecution instituted or pending in any parish wherein he is District Attorney, and shall determine whom, when, and how he shall prosecute."

This means that the District Attorney has complete control of the fixing of cases for trial and, as referred to in this trial, he is the "Master of the Docket" as to ordinary fixings. It is usually only where a defendant has demanded a speedy trial, to which he is entitled, and the District Attorney refuses to fix it, that the Court may step in and order trial. Otherwise, the District Attorney, under this provision of the law, fixes the docket and assigns or asks that cases be assigned for trial. I do not believe the record shows that any judge at any time ever refused to fix a case for trial when so requested by the District Attorney, with the exception that Judge J. Bernard Cocke did not fix any cases for trial on Friday of each week. He assigns as his reason that that was the day each week that he used to research in the Law Library in the Supreme Court Building.

At this juncture, I would like to digress and state that a district judge must necessarily study cases and research the law in making his rulings and writing his per curiams on the various bills of exception and other matters connected with the trial of cases. It requires many more hours of work on his part in this connection than those actually spent sitting on the bench. As an illustration, I have been working many more hours on

the study of this particular case than I have spent hearing it. Also, a judge is on call, you might say, practically 24 hours a day, as there are many times that persons are in trouble or authorization must be obtained from the judge to take appropriate action, such as the matter of bail and other matters that might arise. There are also many motions and other matters taken up in chambers by the judge, and the actual time spent on the bench is not necessarily the largest part of the work that he does. This is a fact that is often overlooked.

I think it is recognized that public officials may be criticized more severely than the average citizen, as by offering themselves for public service they could and should be subject to more criticism. However, this has its remedies if abused.

The right of free speech is a very noteworthy and sensible provision of the Constitution of the United States and of the Constitution of the State of Louisiana. I believe very firmly in this right, so long as it is not abused, and firmly defend it, so long as it does not encroach upon the rights of others as to the protection of their honesty, integrity, reputation, and good name, without just cause.

I might make the statement here that I made on the trial of the motion. I believe it is related in respect to Justice Oliver Wendell Holmes of the United States Supreme Court that, in discussing the question of freedom of speech, he made the statement that this

does not go so far as to allow a person to shout "Fire" in a crowded theater.

Legitimate criticism of public officials should never be abridged. However, I cannot subscribe to the theory that all acts of public officials may be criticized in a defamatory manner with impunity and that the party defamed may not have adequate remedy under the law. A public official or any other person would then be placed in the position of first having to resort to resentment of the unjust criticism or defamation by resorting to physical violence, which would be abhorrent, or, secondly, if defamed publicly in the press, it would mean that he would have to conduct a running fight in the press in seeking to defend himself, or, thirdly, he must otherwise suffer in silence the opprobrium that would be attached to him as a result of the defamatory statement, and, if he does not defend himself, there would be many people who would accept the defamatory statement as true.

Therefore, our lawmakers have seen fit to incorporate in our statutes the right of redress for defamatory statements and a legal method to defend one's good name, honor, integrity, and reputation, so that the right of free speech might not be carried to such an excessive extent that one defamed would not have any legal remedy.

Before passing to a discussion of the questions of law raised in this case, I might say that the evidence convinces me that the statement charged in the bill of

information is a dafamatory statement within the intendment of the law as to defamation and false in its essential particulars.

The statement and the evidence convince me that it has exposed the Judges of the Criminal District Court to hatred, contempt, and ridicule in depriving them of the benefit of public confidence, of social intercourse, within the intendment of L.S.A.-R.S., Title 14, Section 47, et sequitur.

The Defendant in this case is pleading qualified privilege under the provisions of L.S.A.-R.S., Title 14, Section 49. The Court finds that if there exists a qualified privilege, then the State is required to prove that actual malice existed, whether the publication is true or false, if the publication or expression is a comment made in the reasonable belief of its truth, upon the conduct of a person in respect to public affairs.

Malice is defined in Black's Law Dictionary, in part, as:

> "The intentional doing of a wrongful act without just cause or excuse, with an intent to inflict an injury or under circumstances that the law will imply an evil intent."

It is further defined in Webster's Third New International Dictionary as

> "Intention or desire to harm another usually seriously through doing something unlawful or otherwise unjustified; revengeful or unfriendly feelings; ill will, enmity."

It has been defined in several jurisdictions as embracing spite and vindictiveness. *(Words and Phrases,* 26, p. 32.) There are many other definitions of *malice* and *actual malice,* and the question of whether or not malice existed will be proven or not proven by the facts in the individual cases.

The above-quoted provisions of L.S.A.-R.S. 14:47 et seq. are a result of the codification of the law which formerly covered oral and written defamation and has combined libel and slander in a single crime entitled "defamation."

Counsel for the Defendant very strongly objected to the admissibility of the statements made upon other occasions by the Defendant with reference to this particular defamatory statement. The Court believes that those statements were admissible for the reason that the question of actual malice is one about which the Defendant would know best—it is solely within his heart or mind—as to hatred, ill feeling, enmity, spite, vindictiveness, or a desire to injure another, and for other legal reason, as set forth in the provisions governing that in Title 14 of our Revised Statutes. We cannot probe the mind or heart of the person to find these answers, other than by what they might do or say to evidence this. The best evidence of what might have existed could be shown by what might have been said or done with reference thereto, and, therefore, these statements were admissible for the purpose of showing malice only. They show the state of mind that the Defendant had on and from the date of the

original defamation up to and including the date the last one was issued and convince me that it was a steadfast position of ill will and enmity arising out of a dislike of the fact that the Judges refused to sign certain motions for him. This right, to refuse to sign, the Judges had. The Judges had a right to refuse to sign for the reason that the Act placed upon them the responsibility of approving them and it was evidently a check on the validity of the accounts. Therefore, the District Judges had a certain responsibility in this matter to see that the supporting affidavits or vouchers or bills or proof were presented at the time they were requested to sign the motions.

Counsel has raised in his argument of Monday that the District Judges have never explained to the District Attorney why they did not approve his motions. However, the evidence does not reflect that the Defendant had ever made any effort to go to them and ask them for an explanation or sit down with them and try to work the matter out, and, while he was not required to do that, I think that would have been the proper thing to do. It is true that he attended an en banc session of the Judges and they discussed this matter, but I believe the evidence reflects that the rule was already in effect at the time he went in that afternoon.

There have arisen in this case several legal propositions which I will discuss in passing. Some of the Judges, complaining witnesses, take the position that L.S.A.-R.S.14:—I believe that is 15:571.11, as herein-

above quoted is unconstitutional as being in violation of the Home Rule Charter. I do not find it necessary for me to pass upon this question, because it cannot be raised collaterally and its constitutionality is not under attack, other than the statement of the witnesses as to what they believe. Also, I do not believe this was the motivating influence causing the Judges to adopt the rule that they did.

Also, the question has been raised in the testimony of some of the judges, who were witnesses on behalf of the State, that the District Attorney had no police powers or investigative powers in the manner in which he was conducting the investigation of this came under the provisions of Section 16, Act 301 of 1946, which provides—I will read a portion of that Act—as follows:

> ". . . there is hereby created and established, a Department of Police of the City of New Orleans, which shall be solely responsible for the discharge of all police functions herein granted in and for the City of New Orleans and the Parish of Orleans."

Then it refers to the places that they will inspect and police, including:

> ". . . . all houses of ill-fame or prostitution and houses where common prostitutes reside or resort; all lottery offices unauthorized by law, policy or bucket shops;"

and so forth.

The word *solely*, which is used at the beginning of this section, is defined by Webster's Third International Dictionary as meaning:

> "Simply, alone; to the exclusion of alternate or competing things as persons, purposes, or duties."

For the same reasons assigned above, I do not think that it is necessary for me to pass upon this question as it is not an issue in this case of defamation and was not the exerting influence for the imposition or invoking of the five-out-of-eight rule as to the approval of funds for expenditures under the Fines and Forfeitures Act hereinabove quoted.

I gather from the evidence that this action was based on the belief that the Defendant was being extravagant in the expenditure of funds, spending them excessively without supporting vouchers and affidavits or bills or showing of the necessity thereof. Also, it was brought about by reason of the fact that some of the Judges thought the District Attorney might have been playing one Judge against the other to get the bills approved. However, the sole question presented to this Court at this time is whether or not there has been sufficient proof under the law of the defamation of the eight Judges of the Criminal District Court of the Parish of Orleans, whether or not there is a qualified privilege, as pleaded by the Defendant, and, if so found, whether or not the State has proved actual malice such as would destroy qualified privilege.

The cases are legion in our jurisprudence with reference to criminal defamation and civil libel, with complete discussions of *privilege*. Some of the cases are on the question of civil libel, others on the question of criminal libel and defamation. Of course, there would be a difference in the matter of proof in a civil libel and a criminal case, but the principle of law is practically the same or closely related.

Some of the more prominent and pertinent cases discussed are: *State v. O'Donnell*, 141 La. 887, 75 So. 811; *State v. Lambert*, 188 La. 968, 178 So. 508; *Deshotel v. Thistlewaite*, 240 La. 12, 121 So. 2d. 222; *Kennedy v. Item Co., Inc.*, 213 La. 347, 34 So. 2d. 886; *Madison v. Bolton*, 234 La. 997, 102 So. 2d. 433; *Cadro v. Plaquemines Gazette*, 202 La. 1, 11 So. 2d. 10.

I do not see that any useful purpose could be served by a long discussion of the law and legal principles, because I am sure that all counsel for both sides, as well as I, have read these cases and are familiar with the principles of law. I have heretofore discussed most of them on preliminary motions to quash, etc., and in connection with the special charges that I gave, and I will have to discuss them again later on perhaps.

This brings us to a discussion of whether there was actual malice on the part of the Defendant in making the alleged defamatory statement on November 2, 1962. I am of the opinion that there was this malice intended at the time as a result of either anger, provocation, ill feeling, spite, or enmity, by the requirement of the

Judges in requiring the five signatures for the approval of his motions for expenditures and failure to approve the motions for him without question.

As previously stated, under these circumstances, no one should speak or write until after calm deliberation and cool circumspection, which would lead to a reasonable statement.

I am further of the opinion that this malice existed at the time of the making of the statement and continued to exist.

After a careful review of the evidence and serious consideration of the law in this case, I am of the opinion that there was no qualified privilege under the provisions of L.S.A.-R.S., Title 14, Section 49, wherein it is provided that the publication, expression or comment is made in a reasonable belief of the truth of the conduct of the person in respect to public affairs. There are other provisions also in that same article, and it will be taken for the purpose of this opinion as being embraced in its entirety, L.S.A.-R.S., Title 14, Section 49, in the words as set forth in that.

The word *reasonable* is defined in Webster's Third New International Dictionary as:

> "(a) Being in agreement with right thinking or right judgment: not conflicting with reason; not absurd; not ridiculous. (b) Being or remaining within the bounds of reason; not extreme; not excessive."

The word *reasonable* is defined in Webster's Collegiate Dictionary as:

> "(1) Having the faculty of reason; rational. (2) Just; fair-minded; not beyond the bounds of reason, logic."

Words and Phrases, Volume 36 gives us several definitions:

> "To be consistent with that of the prudent man in like circumstances.
>
> "It connotes action according to the dictates of reason—such as is just, fair, and suitable in the circumstances."

Again *Words and Phrases,* Volume 36, gives us:

> "The expression 'honest belief' does not differ from the expression 'reasonable belief.' Both are used conjunctively and disjunctively by different courts.
>
> "'Reasonable belief' * * * must be a belief begotten by attendant circumstances fairly creating it, and must be honestly entertained."

Unquoting from any authorities, I might also observe that the word *reasonable* means just what it says: not a belief founded on caprice, fancy, conjecture, or speculation, but is such that an ordinarily prudent man might be able to assign a just and fair reason for.

After considering all of the evidence in this case, I can only conclude that the Defendant could not have reasonably had any honest or reasonable belief as to

the truth of this statement. It is inconceivable to me that the Defendant could have had a reasonable belief, which could be defined as an honest belief, that not one but all eight of these Judges of the Criminal District Court were guilty of what he charged them with in the defamatory statement. These men have been honored by the citizens of Orleans Parish with very high offices, and some of them for a long number of years. It is inconceivable to me that all of them could have been guilty of all of the accusations made against them. Therefore; I do not believe that the qualified privilege under L.S.A.-R.S., Title 14, Section 49, is applicable in this case, under this or any other part of this article.

However, were it conceded for the purposes of argument that he did have a reasonable belief as to the truth of the statement and his statement was entitled to be considered a qualified privilege, I am of the opinion that the State has proved actual malice in its many definitions to destroy the qualified privilege under any provisions of L.S.A.-R.S., Title 14, Section 49.

It, therefore, becomes my duty as a judge to apply these principles of law to the factual situation herein, and I am doing so under the painful realization of the import of my decision. If the Defendant District Attorney were engaged in a bona fide effort to suppress vice, gambling, prostitution, B-drinking, and other violations of the law in a legal manner, I think that he should be commended. I have never favored

these violations of the law and consistently over the years that I have been on the bench I have charged the grand juries of the parishes of my District specifically on gambling and houses of ill-fame and have rigidly enforced these laws where there has been proven a transgression of them.

I do not find that there is any evidence in the record that any of the Judges who were defamed have expressed any desire to impede the District Attorney in the enforcement of these laws in order to favor these law violators. I believe that is well established by the record, by the testimony of the Judges of the Criminal District Court of Orleans Parish, that the overwhelming majority of the people of the Parish of Orleans are in favor of the suppression of vice, gambling, prostitution, B-drinking, operation of clip joints, and other illegal activities connected therewith. This sentiment is paramount among all of the citizenry of our State.

It is my studied and carefully considered opinion in this case that the Judges had no intention of impeding the suppression of vice, B-drinking, gambling, or prostitution, as such, but that the difficulty with the District Attorney arose by reason of the fact that they were of the opinion that the money was being extravagantly or excessively expended on other items without supporting affidavits, bills or vouchers, or a proper showing. However, I believe the evidence reveals that there is approximately $1,500.00 in unpaid amounts which were supposed to have been expended in the suppression of

vice, prostitution, B-drinking, and other illegal activities. The opinion of the witnesses was that the law did not permit this expenditure. The Legislature left to the discretion of the Judges the question of approving these bills. The Defendant has his own responsibility to the people and the Judges have theirs. Each should be allowed to exercise their judgment and discretion in the manner of his choice as to his duties, so long as it may be lawful.

I would like to also express at this time, and to particularly emphasize, that I deplore vice or corruption in any form, such as gambling, prostitution, B-drinking, clip joints, or any other illegal activity. I stand steadfast for the strict enforcement of those laws, as these crimes should be suppressed wherever found, but I cannot say that one law might be violated to carry out the effect of other laws. All laws should be respected, not only by the average citizen, but particularly by officers who are charged with the duty of enforcing those laws. To say that one law might be violated in order to carry out the enforcement of another law is to compound a wrong, and two wrongs never make a right.

As I stated previously, I reserve the right to further comment, to make any further comment on this that I may deem necessary, on this proposition of law, but these will be taken as comments of my appreciation of the evidence, and insofar as they may be in accord with the evidence, they will be taken, and insofar as

they may be in conflict with what the record reveals, the record, of course, will control as to the comments.

I now will assign as my reasons for judgment that it becomes my duty to determine whether or not the Defendant be guilty or not guilty. Under the facts and the law of this case, the evidence convinces me beyond a reaonable doubt that the Defendant in this case is guilty, and I so find him Guilty as Charged.

LIBRARY
SUPREME COURT, U. S.

No. 4

Office-Supreme Court, U.S.
FILED
SEP 23 1963
JOHN F. DAVIS, CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1963

JIM GARRISON,

Appellant,

v.

STATE OF LOUISIANA,

Appellee.

On Application for Appeal from the Supreme Court of Louisiana or Alternatively Writ of Certiorari to the Supreme Court of Louisiana

MOTION TO DISMISS OR AFFIRM ON BEHALF OF THE STATE OF LOUISIANA

JACK P. F. GREMILLION,
Attorney General,
State of Louisiana,
2201 State Capitol,
Baton Rouge, Louisiana.

M. E. CULLIGAN,
Assistant Attorney General,
State of Louisiana,
104 Supreme Court Bldg.,
301 Loyola Avenue,
New Orleans, Louisiana.

JOHN E. JACKSON, JR.,
Assistant Attorney General,
State of Louisiana,
104 Supreme Court Bldg.,
301 Loyola Avenue,
New Orleans, Louisiana.

INDEX

PAGE

Motion to Dismiss or Affirm 1

Questions Presented 1

Statement 2

Argument 7

Conclusion 32

AUTHORITIES CITED

U. S. CONSTITUTION

1st Amendment 2, 10

14th Amendment 2, 6, 10

U. S. STATUTES

28 U.S.C. 1257(2) 2

28 U.S.C. 1257(3) 2

28 U.S.C. 2103 2

RULES OF SUPREME COURT

Rule 16-1-C 1

CONSTITUTION OF LA. 1921

Article 1, Sec. 3 10

Article 7, Sec. 41 18

Article 7, Sec. 56 3

STATUTES OF LOUISIANA

Revised Statutes of Louisiana of La. of 1950

Title 14, Sections 47-50..1, 3, 7-9, 14, 17, 19, 27, 28, 31

Title 15, Section 340 19

Title 15, Section 341 19

PAGE

LA. CODE OF CIVIL PROCEDURE
Article 224(8) 9

ENCYCLOPEDIAS—
Am. Law Reports Vol. 22, P. 1504..... 19
Am. Juris. Vol. 31, Sections 8-10, PP. 14-17..19, 20
Corpus Juris Secundum Vol. 36, Section 243, P. 715 29
Ruling Case Law, Vol. 16, Section 19, P. 200..... 19
Ruling Case Law, Vol. 16, Supplement, Section 19, P. 4060 19

TEXT BOOKS
Wharton Criminal Law Vol. 2, Sec. 878, P. 741.. 14
Odgers on Libel & Slander 6th Ed. P. 368..... 26

LAW REVIEW
Cornell L. Q. Vol. 35, P. 261, 273 and note 67.... 26

JURISPRUDENCE

STATE COURTS:
Kinnerly v. Hennessy, 68 Fla. 138, 66 So. 729, 19 ALR 1470 26
People v. Spielman, 318 Ill. 482, 489, 149 N.E. 466, 469 26

U.S. COURTS:
Beauharnais v. People of Illinois, 343 U.S. 250 .....10, 11, 14, 17, 22
Bessette v. W. B. Conkey Company, 194 U.S. 324 11
Breard v. Alexandria, 341 U.S. 622..... 10
Bridges v. California, 314 U.S. 252.....11, 12, 13
Caldwell v. Texas, 137 U.S. 692..... 29

PAGE

Cantwell et al v. Connecticut, 310 U.S. 296, 309-310 ..... 12, 16, 22, 26
Chaplinsky v. New Hampshire, 315 U.S. 568 ..... 10, 11, 15, 25, 27, 31
Chappell Chemical and Fertilizer Co. (3) v. Sulphur Mines, 172 U.S. 474 20
Clarke v. McDade, 165 U.S. 168 29
Cox v. State of New Hampshire, 312 U.S. 569, 61 S. Ct. 762, 85 L.Ed. 1049 25
Craig v. Harnay, Sheriff 331 U.S. 367 ..... 13, 20
Dorr v. U.S., 195 U.S. 138 17
Equitable Life Assur. Soc. v. Brown, 187 U.S. 308 29
Ex Parte Hudgins, Petitioner 249 U.S. 378 11
Farmers Education and Co-op Union of America, North Dakota Division, v. WDAY, Inc., 360 U.S. 525 17
Fox Film Corp. v. Muller, 296 U.S. 207 28
Gandia v. Pettingill, 222 U.S. 452 17
Gitlow v. People of New York, 268 U.S. 652 ..... 10, 13
Hamblin v. Western Land Company, 147 U.S. 531 29
Hawkins v. Bleakly, Auditor of the State of Iowa, et al 243 U.S. 210 20
Herb v. Pitcairn et al, Receivers for Wabash Railway Co. 324 U.S. 117 28
Herndon v. Lowry, 301 U.S. 242, 261-264 12
Illinois Central Railroad Co. v. Chicago, 176 U.S. 646 29
Iowa v. Rood, 187 U.S. 87 29

PAGE

Leonard v. Vicksburg S. & P. R. Co., 198 U.S. 416 29
Lynch et al v. New York ex rel Pierson, 293 U.S. 52 28
Manhattan L. Ins. Co. v. Cohen, Executor, 234 U.S. 123 30
McCoy v. Shaw, 277 U.S. 302 28
Mellon v. McCafferty, 239 U.S. 134 28
Meyers v. U.S., 264 U.S. 95 11
Millingar v. Hartupee 6 Wallace, 258-262 in notes 29
Minneapolis Ry. Co. v. Merrick, 254 U.S. 376 29
Nash v. United States, 229 U.S. 373, 33 S. Ct. 780, 57 L. Ed. 1232 25
Near v. Minnesota, 283 U.S. 697 ..... 10, 17
New Orleans v. New Orleans Waterworks Co., 142 U.S. 79 29
New York Central Railroad v. White, 243 U.S. 188 20
Nye v. U.S., 313 U.S. 33 19
Palmer Oil Corporation v. Amerada Petroleum Corp., 343 U.S. 390 29
Parker v. McLain, 237 U.S. 469 30
Pennekamp v. Florida, 328 U.S. 331 ..... 11, 13
People of New York ex rel Doyle v. Atwell, 261 U.S. 590 28
Philadelphia v. Quigley, 62 U.S. 202 17
Republic v. Oswald, 1 U.S. 319 ..... 10, 14
Roth v. U.S., 354 U.S. 476 10
Synder v. Massachusetts, 291 U.S. 97 20

PAGE

Southern Railway Co. v. Durham, 266 U.S. 178 ..... 20, 21
St. Louis C.G. & Ft. S. R. Co. v. Missouri, 156 U.S. 478 29
Thornhill v. State of Alabama, 310 U.S. 88, 60 S. Ct. 736, 84 L.Ed. 1093 24
White v. Nicholls, 44 U.S. 266 17
Wood v. Georgia, 370 U.S. 375 ..... 11, 13
Zucht v. King, 260 U.S. 174 29

No. 400

In the Supreme Court of the United States

OCTOBER TERM, 1963

JIM GARRISON,

Appellant,

v.

STATE OF LOUISIANA,

Appellee.

On Application for Appeal from the Supreme Court of Louisiana or Alternatively Writ of Certiorari to the Supreme Court of Louisiana

MOTION TO DISMISS OR AFFIRM ON BEHALF OF THE STATE OF LOUISIANA

Pursuant to Paragraph 1C of Rule 16 of the revised rules of this Court, Jack P. F. Gremillion, Attorney General of the State of Louisiana and the State of Louisiana move that this appeal be dismissed and that the alternative plea for writ of certiorari be denied, and in the alternative that the judgment of the Louisiana Supreme Court be affirmed.

QUESTIONS PRESENTED

1. Whether the Louisiana Supreme Court was correct in holding that the provisions of Revised Statutes of Louisiana of 1950, Title 14, Sections 47-50, (Criminal Code Articles 47-50, defining and describing the

crime and penalty for Defamation) are not null and void and are not prohibited by the First Amendment to the United States Constitution, guaranteed to citizens of the states by the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

2. Whether the Louisiana Supreme Court was correct in holding that the provisions of the Louisiana Constitution of 1921, authorizing trial by the judge alone in misdemeanor cases, do not violate the First or Fourteenth Amendments or any provisions of the Constitution of the United States.

3. Whether the holding of the Louisiana Supreme Court was correct in stating that, under Louisiana statutes and law, and under the Federal jurisprudence that the offense of Contempt of Court and the crime of Defamation are separate and distinct and that the doctrine of "clear and present danger" should not be considered in the present Defamation conviction.

STATEMENT

This is an appeal under the provisions of 28 U.S.C. 1257(2), from the final judgment of the Louisiana Supreme Court, upholding the conviction of appellant of the crime of Defamation. In the alternative appellant asks this court to exercise its supervisory jurisdiction under 28 U.S.C. 1257(3) and 28 U.S.C. 2103.

On November 8, 1962, the eight Criminal District Court Judges for the Parish of Orleans, as individuals, filed an affidavit against Jim Garrison, the appellant herein, charging him with defamation in violation of

La. R.S. 14:47. Immediately thereafter, appellant, through Frank J. Klein, appellant's First Assistant District Attorney, dismissed the charge, whereupon the eight Criminal District Court Judges for the Parish of Orleans, State of Louisiana, petitioned the Attorney General under his authority granted by the State Constitution (Article 7, Section 56) to directly charge appellant Jim Garrison with defamation in violation of La. R.S. 14:47, the appellant being a party at interest, namely the accused.

Accordingly, Jim Garrison, appellant, was charged of the crime of defamation on November 15, 1962 in the Criminal District Court for the Parish of Orleans in violation of Louisiana Revised Statutes 14:47. The Bill of Information charging the defendant with the offense of Defamation recites in part:

> "Jack P. F. Gremillion, Attorney General for the State of Louisiana, who in the name and by the authority of the said State, prosecutes, in this behalf, in proper person comes into the Criminal District Court for the Parish of Orleans, in the Parish of Orleans, and gives the said Court here to understand and be informed that one Jim Garrison late of the Parish of Orleans, on the 2nd day of November in the year of Our Lord, one thousand nine hundred and sixty-two with force and arms in the Parish of Orleans aforesaid, and within the jurisdiction of the Criminal District Court for the Parish of Orleans, did wilfully, unlawfully and maliciously defame each, George B. Platt, Judge of Section 'B', Criminal District Court for the Parish of Orleans and the

presiding judge thereof, and one Malcolm V. O'-Hara, Judge of Section 'A' of the Criminal District Court for the Parish of Orleans, one Edward A. Haggerty, Jr., Judge of Section 'C' Criminal District Court for the Parish of Orleans, one Thomas M. Brahney, Jr., Judge of Section 'D' of the Criminal District Court for the Parish of Orleans, one J. Bernard Cocke, Judge of Section 'E', Criminal District Court for the Parish of Orleans, one Oliver P. Schulingkamp, Judge of Section 'F', Criminal District Court, for the Parish of Orleans, one Shirley G. Wimberly, Judge of Section 'G', Criminal District Court for the Parish of Orleans, and Bernard J. Bagert, Judge of Section 'H', Criminal District Court for the Parish of Orleans, which said judges constitute all the entire bench of the Criminal District Court for the Parish of Orleans, and did publish and express in the public press of the City of New Orleans to persons other than the parties defamed which said publication and expressions are recited herein below of certain things which tend to expose to hatred, contempt and ridicule and deprive such persons of their benefit of public confidence and social intercourse. The said publication and expressions being contained in the following news item reproduced from the New Orleans States-Item, (an afternoon daily newspaper published in the City of New Orleans, Parish of Orleans, published on November 2nd, 1962 which reads as follows, to-wit: . . . ."

Immediately following the above quoted portion of the Bill of Information followed the statement made by appellant to the Press. (See page 31 in the appen-

dix of applicant's brief for the complete defamatory statement of which appellant was convicted.)

On November 13, 1962, the Supreme Court of the State of Louisiana (on the petition of the State) appointed Honorable William H. Ponder, Judge of the Eleventh Judicial District Court, to sit as Judge ad hoc for Section "C" of the Criminal District Court for the Parish of Orleans for the trial of the instant cause, No. 177-418 of the Docket of the Criminal District Court for the Parish of Orleans, entitled "State of Louisiana versus Jim Garrison". (LSA-R.S. 15:-307.) The order was effective immediately. All of the judges of the Criminal District Court for the Parish of Orleans, including the presiding judge of Section "C", to which Section this case had been allotted, recused themselves and Judge-ad-hoc Ponder proceeded with trial of the cause.

Prior to trial on the merits, appellant filed Motions to Recuse Judge-ad-hoc Ponder, a Demurrer, and a Motion to Quash and an Application for a Bill of Particulars on December 4, 1962. On December 5, 1962, appellant filed a Motion for Trial by Jury. All four Motions were overruled by the court, and the State then filed an Answer to appellant's Application for a Bill of Particulars, (See Page 46 of appellant's Jurisdictional Statement). The State also filed a Motion to Recuse District Attorney Garrison, he being a party at interest, which Motion was sustained by the trial court. Appellant was represented in the state courts in proper person and by attorneys Donald V. Organ and Louis P. Trent. We are concerned on this

appeal only with the Demurrer and the Motion for Trial by Jury. Thereafter, appellant was tried and on February 6, 1963, the court rendered its judgment of "Guilty as Charged." Appellant moved for a New Trial and filed a Motion in Arrest of Judgment both of which were overruled.

Appellant as to his Motion for Trial by Jury, Demurrer, Motion in Arrest of Judgment and Motion for New Trial asserts in his jurisdictional statement that "Louisiana's constitutional provision for trial of the charge against him without a jury, and that Louisiana's Statutory Provisions defining and prescribing punishment for the crime of Defamation, could not be applied to appellant in this case without violating his rights under the Fourteenth Amendment to the Constitution of the United States, for the reason that his statements were comments on the judges' official conduct, and did not involve a clear and present danger to the preservation of the peace or to the proper administration of justice." (See page 10 of appellant's jurisdictional statement.)

Appellant, after citing numerous text books and Law Review Articles concludes:

> "From this constitutional principle it follows, first, that 'although jury trial in criminal libel cases may not be guaranteed by the Sixth Amendment as reflected in the Fourteenth,' it must be placed among the constitutional protections of free speech 'ensured by the embodiment of the First Amendment in the Fourteenth.'"

(See page 23 of appellant's jurisdictional statement.)

This apparently is a plea for this Court to note jurisdiction on the mere alleged involvement of a federal question which we specifically deny, there being no federal question involved. There is no authority for the proposition that "freedom of speech" guarantees a jury trial in the prosecution for criminal defamation.

ARGUMENT

In our opinion, appellant has made a deliberate effort to confuse this court by implying that there is no distinction in law between the offense of Contempt of Court and the crime of Defamation. The distinction can readily be seen from the below quoted statutes of Louisiana R.S. of 1950, Title 14 (Criminal Code)

"§47. Defamation

"Defamation is the malicious publication or expression in any manner, to anyone other than the party defamed, of anything which tends:

(1) To expose any person to hatred, contempt, or ridicule, or to deprive him of the benefit of public confidence or social intercourse; or

(2) To expose the memory of one deceased to hatred, contempt, or ridicule; or

(3) To injure any person, corporation, or association of persons in his or their business or occupation.

"Whoever commits the crime of defamation shall be fined not more than three thousand dollars,

or imprisoned for not more than one year, or both."

* * *

"§48. Presumption of malice

"Where a non-privileged defamatory publication or expression is false it is presumed to be malicious unless a justifiable motive for making it is shown.

"Where such a publication or expression is true, actual malice must be proved in order to convict the offender."

"§49. Qualified privilege

"A qualified privilege exists and actual malice must be proved, regardless of whether the publication is true or false, in the following situations:

(1) Where the publication or expression is a fair and true report of any judicial, legislative, or other public or official proceeding, or of any statement, speech, argument, or debate in the course of the same.

(2) Where the publication or expression is a comment made in the reasonable belief of its truth, upon,

(a) The conduct of a person in respect to public affairs; or

(b) A thing which the proprietor thereof offers or explains to the public.

(3) Where the publication or expression is made to a person interested in the communication, by one who is also interested or who stands in such

a relation to the former as to afford a reasonable ground for supposing his motive innocent.

(4) Where the publication or expression is made by an attorney or party in a judicial proceeding."

* * *

"§50. Absolute privilege

"There shall be no prosecution for defamation in the following situations:

(1) When a statement is made by a legislator or judge in the course of his official duties.

(2) When a statement is made by a witness in a judicial proceeding, or in any other legal proceeding where testimony may be required by law, and such statement is reasonably believed by the witness to be relevant to the matter in controversy.

(3) Against the owner, licensee or operator of a visual or sound broadcasting station or network of stations or the agents or employees thereof, when a statement is made or uttered over such station or network of stations by one other than such owner, licensee, operator, agents or employees. As amended Acts 1950, No. 469, §1."

Constructive Contempt, Louisiana Code of Civil Procedure, Art. 224(8), is defined in part as, "Comment by a newspaper or other medium for the dissemination of news upon a case or proceeding, then pending and undecided, which constitutes a clear, present, and imminent danger of obstructing or interfering with the orderly administration of justice, by either influencing the court to reach a particular

decision, or embarrassing it in the discharge of its judicial duties."

The Constitution of the State of Louisiana specifically recognizes that freedom of speech is not an absolute privilege, but is subject to limitation for abuse, in accordance with criminal law.

Article 1, Section 3, of the Louisiana Constitution provides as follows:

> "No law shall ever be passed to curtail or restrain the liberty of speech or of the press; any person may speak, write and publish his sentiments on all subjects, *being responsible for the abuse of that liberty.*"

It is well settled that libelous or slanderous utterances are not protected by the freedom of speech guarantee of the first and fourteenth amendments of the U.S. Constitution. *Respublica v. Oswald*, 1 U.S. 319, 1 Dall 319, 1 L.Ed. 155; *Chaplinsky v. State of New Hampshire*, 62 S. Ct. 766, 315 U.S. 568, 86 L.Ed. 1031; *Beauharnais v. People of Illinois*, 72 S. Ct. 725, 343 U.S. 250, 96 L.Ed. 919; *Roth v. U. S.*, 77 S. Ct. 1304, 354 U.S. 476, 1 L.Ed 2d 1498; *Breard v. City of Alexandria*, 71 S. Ct. 920, 932, 341 U.S. 622; *Gitlow v. New York*, 268 U.S. 652, 45 S. Ct. 625, 69 L.Ed. 1138; *Near v. Minnesota*, 283 U.S. 697, 51 S. Ct. 625, 75 L.Ed. 1357.

Furthermore, it is settled that the test of "clear and present danger to the administration of justice," although applicable to contempt proceedings, is not applicable to prosecutions under criminal libel or def-

amation statutes. *Chaplinsky v. New Hampshire*, 62 S. Ct. 766, 315 U.S. 568, 86 L.Ed. 1031; *Beauharnais v. People of Illinois*, 72 S. Ct. 725, 343 U.S. 250, 96 L.Ed. 919.

Appellant creates a false issue by confusing contempt of court and criminal libel (defamation.)

Contempt is essentially an offense against the orderly administration of justice, while defamation is essentially a crime against society involving injury to individual human beings.

The purpose of contempt proceedings, which arise from the inherent power of courts to prevent obstructions of justice, is to protect judicial authority from obstruction in the performance of its duties. *Ex parte Hudgings*, 39 S. Ct. 337, 249 U.S. 378, 63 L.Ed. 656; *Bridges v. California*, 314 U.S. 252, 62 S. Ct. 190; *Pennekemp v. Florida*, 66 S. Ct. 1029, 328 U. S. 331, 90 L.Ed. 1295; *Wood v. Georgia*, 82 S. Ct. 1364, 370 U. S. 375, 8 L.Ed. 2d 569. "Contempt proceedings are sui generis, neither civil actions nor prosecutions for offenses, within the ordinary meaning of these terms, but an exercise of the power inherent in all courts to enforce obedience, something they must possess in order to perform their functions." *Meyers v. U.S.*, 44 S.Ct. 272, 264 U.S. 95, 68 L.Ed. 577. "A criminal contempt involves no element of personal injury. It is directed against the power and dignity of the court, and private parties have little, if any interest in the proceedings for its punishment." *Bessette v. Conkey*, 24 S.Ct. 665, 194 U.S. 324.

In *Bridges v. State of California*, 62 S.Ct. 190, 314 U.S. 252, the first contempt case in which this court applied the test of "clear and present danger to the administration of justice," the court pointed out at the outset that it was not dealing with state legislation restricting a specific evil but with the inherent power of courts to punish for contempt. The court stated the following:

> "It is to be noted at once that we have no direction by the legislature of California that publications outside the court room which comment upon a pending case in a specified manner should be punishable. As we said in *Cantwell v. Connecticut*, 310 U.S. 296, 307-308, such a 'declaration of the State's policy would weigh heavily in any challenge of the law as infringing constitutional limitations.' But as we also said there, the problem is different where 'the judgment is based on a common law concept of the most general and undefined nature.' Id. 308. Cf. *Herndon v. Lowry*, 301 U.S. 242, 261-264. For here the legislature of California has not appraised a particular kind of situation and found a specific danger sufficiently imminent to justify a restriction on a particular kind of utterance. The judgments below, therefore, do not come to us encased in the armor wrought by prior legislative deliberation. Under such circumstances, this Court has said that 'it must necessarily be found, as an original question,' that the specified publications involved created 'such likelihood of bringing about the substantive evil as to deprive (them) of the constitution-

al protection.' *Gitlow v. New York*, 268 U.S. 652, 671."

In *Wood v. Georgia*, supra, the most recent contempt case in which the "clear and present danger to the administration of justice" standard was applied, the court again pointed out that there was no state statute allowing the prosecution for contempt, and that, in fact, there was a state statute expressly limiting contempt power over out-of-court statements. The court stated:

> "Initially, however, it should be noted that the Georgia courts have determined that the power to punish for contempt of court is inherent in its state judiciary and the Court of Appeals thus ignored the express limitations imposed by the Georgia Legislature in punishing out-of-court statements. This holding thus deprives the judgment of coming to this Court 'encased in the armor wrought by prior legislative deliberation,' *Bridges v. California*, supra, 314 U.S. at 261, 62 S.Ct. at 192, and it is upon this basis that we proceed."

In all state contempt-of-court cases wherein this court has applied the standard of "clear and present danger to the administration of justice," including *Pennekamp v. Florida*, *supra*, and *Craig v. Harney*, 67 S. Ct. 1249, 331 U.S. 367, 91 L. Ed. 1546, there was no state statute for contempt involved, and thus no legislative determination of a specific danger.

It should further be pointed out that as a matter of substantive difference contempt proceedings do not require actual malice; nor are truth or privilege de-

fenses. In direct contrast, all of the latter safeguards are present in the Louisiana defamation statute. See La. R.S. 14:47-50.

Procedurally, summary contempt proceedings against the contemnor are tried by the same judge. By contrast, the appellant's conviction in the instant case tried before by an impartial judge from a different judicial district approximately three hundred miles from New Orleans, was based on ordinary and regular criminal trial clothed with all the safeguards provided under the Louisiana Constitution and Statutes. In the instant case, the State of Louisiana proceeded in the normal and regular way as with any trial of any individual accused of a misdemeanor.

The appellant herein was not convicted of contempt of court, but was convicted of the crime of defamation of private individuals which is a crime against the peace and dignity of the State of Louisiana. The purpose of criminal libel or defamation statutes is twofold: the preservation of the public peace and the protection of all members of society from injury resulting from malicious utterances. See *Republica v. Oswald*, 1 U.S. 319, 1 dall 319, 1 L. Ed. 155; *Beauharnais v. People, supra;* 2 Wharton's Criminal Law §878, P. 741.

The evil of defamatory utterances is aptly discussed in the Oswald case as follows:

> "With respect to the heart of the libeler, it is more dark and base than that of the assassin, or than his who commits a midnight arson. It is

true, that I may never discover the wretch who has burned my house, or set fire to my barn; but these losses are easily repaired, and bring with them no portion of ignominy or reproach. But the attacks of the libeler admit not of this consolation; the injuries which are done to character and reputation seldom can be cured, and the most innocent man may in a moment be deprived of his good name, upon which, perhaps, he depends for all the prosperity, and all the happiness of his life. To what tribunal can he then resort, how shall he be tried, and by whom shall he be acquitted? It is in vain to object, that those who know him will disregard the slander, since the wide circulation of public prints must render it impracticable to apply the antidote as far as the poison has been extended. Nor can it be fairly said, that the same opportunity is given to vindicate, which has been employed to defame him; for many will read the charge, who may never see the answer; and while the object of accusation is publicly pointed at, the malicious and malignant author, rests in the dishonorable security of an anonymous signature. Where much has been said, something will be believed, and it is one of the many artifices of the libeler, to give to his charges an aspect of general support, by changing and multiplying the style and name of his performances. But shall such things be transacted with impunity in a free country, and among an enlightened people? Let every honest man make this appeal to his heart and understanding, and the answer must be - no!"

Chaplinsky v. State of New Hampshire, 62 S. Ct. 766, 315 U.S. 568, 86 L.Ed. 1031, recognized that

a state has the right to protect its citizens from injury caused by defamatory utterances. Holding that resort to personal abuse, such as "racketeer," was not in any sense communication of information or opinion safeguarded by the federal constitution and that its punishment as a criminal act raised no question under the Constitution, the court made the following observation:

> "Allowing the broadest scope to the language and purpose of the Fourteenth Amendment, it is well understood that the right of free speech is not absolute at all times and under all circumstances. There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem. These include the lewd and obscene, the profane, the libelous, and the insulting or 'fighting' words--those which by their very utterance inflict injury or tends to incite an immediate breach of the peace. It has been well observed that such utterances are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from th. m is clearly outweighed by the social interest in order and morality. 'Resort to epithets or personal abuse is not in any proper sense communication of information or opinion safeguarded by the Constitution, and its punishment as a criminal act would raise no question under that instrument.' *Cantwell v. Connecticut*, 310 U.S. 296, 309-310."

The logical conclusion from the *Chaplinsky* decision (supra) is that in prosecutions for criminal libel,

involving words which, by their very utterance, inflict injury or tend to an immediate breach of the peace, the test of clear and present danger (either of injury to the individual who is defamed or of breach of the peace) should not be considered. This conclusion was reached by this court in *Beauharnais v. People of Illinois*, 72 S.Ct. 725, 343 U.S. 250, 96 L.Ed. 919, wherein the court stated:

> "Libelous utterances not being within the area of constitutionally protected speech, it is unnecessary, either for us or for the State courts, to consider the issues behind the phrase 'clear and present danger.' Certainly no one would contend that obscene speech, for example, may be punished only upon a showing of such circumstances. Libel, as we have seen, is in the same class."

The Louisiana defamation statute (R.S. 14:47-50) is in accord with the federal jurisprudence on libelous statements, including what constitutes a defamatory utterance, privilege, fair comment on public officials, and the destruction of privilege by excess or by actual malice. *White v. Nicholls*, 44 U.S. 266, 3 Howard 266, 11 L.Ed. 591; *Dorr v. U.S.*, 24 S.Ct. 808, 195 U.S. 138, 49 L.Ed. 128; *Philadelphia v. Quigley*, 62 U.S. 202, 21 Howard 202, 16 L.Ed. 73; *Gandia v. Pettingill*, 32 S.Ct. 127, 222 U.S. 452, 56 L.Ed. 267; *Farmers Education & Coop Union v. W. Day, Inc.*, 79 S.Ct. 1302, 360 U.S. 525, 3 L.Ed. 2d 1407; *Near v. Minnesota*, 283 U.S. 697, 51 S.Ct. 625, 75 L.Ed. 1357.

The State of Louisiana, as its defamation statute (R.S. 14:47-50) and its jurisprudence show has no

tolerance whatever for any special claim by judges of immunity from criticism. It is submitted, however, that under the *Chaplinsky* and *Beauharnais* decisions, supra, the first and fourteenth amendments do not deprive the state in a defamation prosecution of its right and duty to preserve the public peace and to protect all members of society, including judges, from the evils of malicious libelous utterances.

Appellant was tried in the same manner as any other person who committed a misdemeanor in accordance with the laws and statutes of the State of Louisiana. This *was not* a prosecution for criticism of the Government. It was a prosecution for the violation of the crime of defamation, a misdemeanor under state law.

For the purpose of outlining our motion in an orderly fashion, we would like to call the court's attention to the pertinent, prudent provisions of the Louisiana Constitution of 1921 and Revised Statutes of Louisiana dealing with trial by jury as applicable to the instant case.

Article VII, Section 41, of the Louisiana Constitution of 1921, provides:

> "*****All cases in which the punishment may not be at hard labor shall, until otherwise provided by law, be tried by the judge without a jury.* Cases, in which the punishment may be at hard labor, shall be tried by a jury of five, all of whom must concur to render a verdict; cases, in which the punishment is necessarily at hard labor, by a jury of twelve, nine of whom must

concur to render a verdict; cases in which the punishment may be capital, by a jury of twelve, all of whom must concur to render a verdict." (Emphasis ours.)

LSA-R.S. 15:340 recites:

"Every misdemeanor shall be triable by the judge without the intervention of a jury."

LSA-R.S. 15:341 states:

"A misdemeanor is defined to be an offense, the punishment of which is necessarily a fine or imprisonment in the parish jail or both."

LSA-R.S. 14:47, under which the defendant was charged, provides that, "Whoever commits the crime of defamation shall be fined not more than three thousand dollars, or imprisoned for not more than one year."

There is no provision in the Constitution of the United States requiring a state to try misdemeanors by jury. This conclusion was reached by the Louisiana Supreme Court in its opinion. (See page 73 of appellant's jurisdictional statement.)

Appellant correctly concedes that in no manner is Article 6 of the Bill of Rights a limitation on the State; and that it is inapplicable to State proceedings. See 31 Am.Juris., Verbo, Jury, Sections 8-10, pp. 14-17, 16 R.C.L. pp. 200, Section 19 and Supp. pp. 4060, Section 19; 22 A.L.R. 1504. However, appellant attempts by legal legerdemain to assert that trial by jury is a fundamental right of freedom of speech constitutionally guaranteed to him. Appellant cites no authority for this proposition. *Nye v. U.S.*, 313 U.S.

33, cited by appellant as emphasizing the jury question, had nothing to do with freedom of speech under the first amendment, but merely involved the construction of an 1832 amendment of the 1789 federal statute concerning summary contempt by Federal Courts. All that the court pointed out was that abuses of the summary nonjury contempt power by federal judges had led Congress to enact the amendment. The other case cited by appellant as "emphasizing the jury question" is *Craig v. Harney*, supra, a contempt proceeding wherein the Court was concerned with the self-interest of the same judge whose conduct was criticized to sit in judgment upon the contemnor, and summarily, and without a jury trial to punish him. The instant case does not involve the power of the same judge who was defamed to sit in judgment upon the defamer. Appellant was convicted only after a regular criminal trial before a different judge who had no personal interest whatever in the case.

It has long been settled that trial by jury is not embraced in the rights secured by the fourteenth amendment to the Federal Constitution. *New York Central Railroad v. White*, 243 U.S. 188 37 S. Ct. 247, 61 L.Ed. 667; *Hawkins v. Bleakly*, 243 U.S. 210, 37 S.Ct. 255, 61 L.Ed. 678; *Snyder v. Massachusetts*, 291 U.S. 97, 78 L.Ed. 674, 54 S.Ct. 330; *Chappell Chemical Company v. Sulphur Mines*, 172 U.S. 474, 43 L.Ed. 520, 19 S.Ct. 268; *Southern Railway Company v. Durham*, 266 U.S. 178, 45 S.Ct. 51, 69 L. Ed. 231; 31 Am. Jur Verbo Jury, Sections 8-10, pp. 14-17. Accordingly, when state statutes prescribe the

trial of issues by a judge without a jury, there is nothing in the federal constitution requiring trial by jury. *Southern Railway Company v. Durham, supra, Dorr v. U.S.*, 24 S. Ct. 808, 195 U.S. 138, 49 L.Ed. 128.

On the trial of this matter, appellant had the opportunity to interpose the defense of truth or reasonable belief of truth. Despite the fact that each and every complainant testified under oath that the statement made by appellant and set forth in toto in the Bill of Information was untrue, appellant did not offer any evidence to rebut this testimony.

Appellant had been informed that the state intended to prove malice in law and malice in fact by the state's answer to appellant's application for a bill of particulars.

During the trial the state introduced evidence showing other statements of appellant which the court found substantiated the state's contention that the statement of appellant constituted malice in law and also malice in fact.

We would also like to point out that four of the complainants testified that the defamatory statement of appellant subjected them to ridicule, embarrassment and contempt.

We are not going into the merits of the case on this motion, but it is necessary to set forth certain facts, which tend to show that appellant has failed to present a substantial Federal question. At this time, we would respectfully refer the court to the

quoted portion of the Bill of Information set forth above, (see p. 31 thru 38 of of appellant's jurisdictional statement) as the Bill of Information clearly shows that the judges were individually defamed and the appellant has attempted to ignore this in his jurisdictional statement and speaks only of "breach of peace" when discussing the jurisprudence dealing with criminal libel (Defamation).

We quote from *Beauharnais v. The People of the State of Illinois*, 343 U.S. 250, 251, 72 Supreme Court 725, 728, as follows:

> "The petitioner was convicted upon information in the Municipal Court of Chicago of violating Sec. 224a of Division 1 of the Illinois Criminal Code, Ill. Rev. Stat. 1949, c. 38, Sec. 471. He was fined $200. The section provides:
>
> > 'It shall be unlawful for any person, firm or corporation to manufacture, sell, or offer for sale, advertise or publish, present or exhibit in any public place in this state any lithograph, moving picture, play, drama or sketch, which publication or exhibition portrays depravity, criminality, unchastity, or lack of virtue of a class of citizens, of any race, color, creed or religion which said publication or exhibition exposes the citizens of any race, color, creed or religion to contempt, derision, or obloquy or which is productive of breach of the peace or riots. * * *'
>
> "Beauharnais challenged the statute as violating the liberty of speech and of the press guaranteed as against the States by the Due Process Clause

of the Fourteenth Amendment, and as to vague, under the restrictions implicit in the same Clause, to support conviction for crime. The Illinois courts rejected these contentions and sustained defendant's conviction. 408 ILL. 512, 97 N.E. 2d 343. We granted certiorari in view of the serious questions raised concerning limitations imposed by the Fourteenth Amendment on the power of a State to punish utterances promoting friction among racial and religious groups. 342 U.S. 809, 72 S. Ct. 39.

"The information, cast generally in the terms of the statute, charged that Beauharnais 'did unlawfully * * * exhibit in public places lithographs, which publications portray depravity, criminality, unchastity or lack of virtue of citizens of Negro race and color and which exposes (sic) citizens of Illinois of the Negro race and color to contempt, derision, or obloguy * * *'. The lithograph complained of was a leaflet setting forth a petition calling on the Mayor and City Council of Chicago 'to halt the further encroachment, harassment and invasion of white people, their property, neighborhoods and persons, by the Negro * * *'. Below was a call for 'One million self respecting white people in Chicago to unite * * *', with the statement added that "If persuasion and the need to prevent the white race from becoming mongrelized by the negro will not unite us, then the aggressions * * * rapes, robberies, knives, guns and marijuana of the negro, surely will.' This, with more language, similar if not so violent, concluded with an attached application for membership in the White Circle League of America, Inc.

"The testimony at the trial was substantially undisputed. From it the jury could find that Beauharnais was president of the White Circle League; that, at a meeting on January 6, 1950, he passed out bundles of the lithographs in question, together with other literature, to volunteers for distribution on downtown Chicago street corners the following day' that he carefully organized that distribution, giving detailed instructions for it; and that the leaflets were in fact distributed on January 7 in accordance with his plan and instructions. The court, together with other charges on burden of proof and the like, told the jury, 'if you find * * * that the defendant, Joseph Beauharnais, did * * * manufacture, sell, or offer for sale, advertise or publish, present or exhibit in any public place the lithograph * * * then you are to find the defendant guilty * * * .' He refused to charge the jury, as requested by the defendant, that in order to convict they must find 'that the article complained of was likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance or unrest.' Upon this evidence and these instructions, the jury brought in the conviction here for review.

"The statute before us is not a catchall enactment left at large by the State court which applied it. Cf. *Thornhill v. State of Alabama*, 310 U.S. 88, 60 S. Ct. 736, 84 L. Ed. 1093; *Cantwell v. State of Connecticut*, 310 U.S. 296, 307, 60 S. Ct. 900, 904, 84 L. Ed. 1213. It is a law specifically directed at a defined evil, its language drawing from history and practice in Illinois and in more than a score of other jurisdictions a meaning con-

firmed by the Supreme Court of that State in upholding this conviction. We do not, therefore, parse the statute as grammarians or treat it as an abstract exercise in lexicography. We read it in the animating context of well-defined usage, *Nash v. United States*, 229 U.S. 373, 33 S. Ct. 780, 57 L. Ed. 1232, and State court construction which determines its meaning for us. *Cox v. State of New Hampshire*, 312 U.S. 569, 61 S. Ct. 762, 85 L. Ed. 1049; *Chaplinsky v. State of New Hampshire*, 315 U. S. 568, 62 S. Ct. 766, 86 L. Ed. 1031.

"The Illinois Supreme Court tells us that § 224a 'is a form of criminal libel law'. 408 Ill. 512, 517, 97 N.E. 2d 343, 346. The defendant, the trial court and the Supreme Court consistently treated it as such. The defendant offered evidence tending to prove the truth of parts of the utterance, and the courts below considered and disposed of this offer in terms of ordinary criminal libel precedents. Section 224a does not deal with the defense of truth, but by the Illinois Constitution, Art. II § 4, S.H.A., 'in all trials for libel, both civil and criminal, the truth, when published with good motives and for justifiable ends, shall be a sufficient defense.' See also Ill. Rev. Stat., 1949, c. 38, § 404. Similarly, the action of the trial court in deciding as a matter of law the libelous character of the utterance, leaving to the jury only the question of publication, follows the settled rule in prosecutions for libel in Illinois and other States. Moreover, the Supreme Court's characterization of the words prohibited by the statute as those 'liable to cause violence and disorder' paraphrases the traditional justification for punish-

ing libels criminally, namely their 'tendency to cause breach of the peace.'[1]

"Libel of an individual was a common-law crime, and thus criminal in the colonies. Indeed, at common law, truth or good motives was no defense. In the first decades after the adoption of the Constitution, this was changed by judicial decision, statute or constitution in most States, but nowhere was there any suggestion that the crime of libel be abolished. Today, every American jurisdiction—the forty-eight States, the District of Columbia, Alaska, Hawaii and Puerto Rico—punish libels directed at individuals. 'There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which has never been thought to raise any Constitutional problem. These include the lewd and obscene, the profane, the libelous, and the insulting or 'fighting' words—those which by their very utterance inflict injury or tend to incite an immediate breach of the peace. It has been well observed that such utterances are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality. 'Resort to epithets or personal abuse is not in any proper sense communication of information or opinion safeguarded by the Constitution, and its punishment as a criminal act would raise no question under that instrument.' *Cantwell v. State*

[1] See, e.g., *People v. Spielman*, 318 Ill. 482, 489, 149 N.E. 466, 469; Odgers, Libel and Slander (6th ed.), 368; *Kennerly v. Hennessy*, 68 Fla. 138, 66 So. 729, 19 A.L.R. 1470. Some States hold, however, that injury to reputation, as in civil libel, and not tendency to breach of the peace, is the gravamen of the offense. See Tanenhaus, Group Libel, 35 Cornell L.Q. 261, 273 and n. 67.

> *of Connecticut*, 310 U.S. 296, 309, 310, 60 S. Ct. 900, 906, 84 L. Ed. 1213.' Such were the views of a unanimous Court in *Chaplinsky v. State of New Hampshire, supra*, 315 U.S. at pages 571-572, 62 S. Ct. at page 769.

Stripped of nonessentials, appellant's claim is one of federal immunity or privilege from prosecution for defamation for the sole reason that his defamatory remarks were directed toward persons who happened to be District Court Judges.

In R.S. 14:49, the Louisiana Defamation Statute grants a qualified privilege for fair criticism or fair comment upon judges' official conduct.

During the trial of this case, appellant raised the defense of qualified privilege, this defense was passed upon by the State Trial Court, which found as a fact from the evidence before it, that the defendant did not have a qualified privilege under LSA R.S. 14:49 because there was no proof adduced of appellant's reasonable belief in the truth of his utterance and because his utterance, in certain respects, abused the privilege by going beyond mere criticism or comment; that even if qualified privilege had existed, it was destroyed by defendant's actual malice which was shown by the evidence, produced by the state on the trial of the case. These determinations of the Trial Court were affirmed by the State Supreme Court and are in harmony with the federal jurisprudence on libel.

In granting appellant a qualified privilege from prosecution for defamatory expressions about judges'

official conduct, LSA R.S. 14:49 gave him the same right to criticize judges which is guaranteed under the free speech provisions of the First and Fourteenth Amendments. When the State Court considered appellant's defense of qualified privilege and determined from the facts and the evidence of the case that appellant's utterance was not qualifiedly privileged under LSA R.S. 14:49, it based its decision upon a non-federal ground, independent of the federal question involved, broad enough to sustain the judgment and in harmony with the decisions of the United States Supreme Court in libel cases. The United States Supreme Court has always refused to review judgments of State Courts that rest on adequate and independent state grounds. *McCoy v. Shaw*, 277 U.S. 302, 48 S. Ct. 519, 52 L. Ed. 891; *Mellon v. McCafferty*, 239 U.S. 134, 36 S. Ct. 94, 60 L. Ed. 181, *People of N.Y. ex rel Doyle v. Atwell*, 216 U.S. 590, 43 S. Ct. 410, 67 L. Ed. 814; *Lynch v. People of N. Y.*, 293 U.S. 52, 55 S. Ct. 16, 79 L. Ed. 191; *Fox Film Corp. v. Muller*, 296 U.S. 207, 56 S. Ct. 183, 80 L. Ed. 158; *Herb v. Pitcairn*, 324 U.S. 117, 65 S. Ct. 459, 89 L. Ed. 789.

From a reading of the opinion of the Louisiana State Supreme Court, one must conclude that its decision was in accord with both the State and Federal jurisprudence. While it is a well established legal principle that it may, with some show of reason, be said that, no matter how lacking in merit the Federal contention may be, the Supreme Court of the United States cannot logically, for that reason alone, decline to entertain jurisdiction of a writ of error to a state

court, still the court is committed to the doctrine that a real, and not a fictitious, Federal question is essential to the exercise of this jurisdiction. *Hamblin v. Western Land Co.* 147 U.S. 531, 37 L. Ed. 267, 13 Sup. Ct. Rep. 353; *New Orleans v. New Orleans Waterworks Co.* 142 U.S. 79, 35 L. Ed. 943, 12 Sup. Ct. Rep. 142; *Millingar v. Hartupee*, 6 Wall. 258, 18 L. Ed. 829; *Caldwell v. Texas*, 137 U.S. 692, 34 L. Ed. 816, 11 Sup. Ct. Rep. 224; *St. Louis, C.G. & Ft. S.R. Co. v. Missouri*, 156 U.S. 478, 39 L. Ed. 502, 15 Sup. Ct. Rep. 443; *Illinois C.R. Co. v. Chicago*, 176 U.S. 646, 44 L. Ed. 622, 20 Sup. Ct. Rep. 509; *Equitable Life Assur. Soc. v. Brown*, 187 U.S. 308, 47 L. Ed. 190, 23 Sup. Ct. Rep. 123; *Clarke v. McDade*, 165 U.S. 168, 41 L. Ed. 673, 17 Sup. Ct. Rep. 284; *Iowa v. Rood*, 187 U.S. 87, 47 L. Ed. 86, 23 Sup. Ct. Rep. 49.

A Federal question may have been so explicitly foreclosed by prior federal decisions as to afford no basis for a writ of error from the Supreme Court of the United States to a state court. *Leonard v. Vicksburg*, S. & P.R. Co. 198 U.S. 416, 49 L. Ed. 1108, 25 Sup. Ct. Rep. 750.

No substantial federal question is presented when the state court is clearly correct in its interpretation of the federal question, and where the federal question suggested has been foreclosed by previous federal jurisprudence. *Zucht v. King*, 260 U.S. 174, 43 S.Ct. 24, 67 L.Ed. 194; *Palmer Oil Corporation v. Amerada Petroleum Corporation*, 343 U.S. 390, 96 L.Ed. 1022, 72 S.Ct. 842; see 36 C.J.S. Verbo Federal Courts, Sec. 243, p. 715; *Minneapolis Ry. Co. v. Merrick*, 41 S.Ct.

142, 254 U.S. 376, 65 L.Ed. 312; *Manhattan L. Ins. Co. v. Cohen*, 34 S.Ct. 874, 234 U.S. 123, 58 L.Ed. 1245.

The Louisiana Supreme Court is undubitably correct in its opinion on both the state and federal questions as can be seen by reference to the opinion and the authorities cited above. The jurisprudence is well settled that libelous utterances are not within the area of constitutionally protected speech under the first amendment of the constitution of the United States, and such libelous utterances can be prohibited by state law which imposes criminal penalties.

We would also like to point out that appellant in the instant case has written his jurisdictional statement on the false premise that the appellant's statement in the Bill of Information was a fair comment on the conduct of the judges in their official capacity. This is obviously a false assumption as the appellant's remarks were not a comment on the judges' official conduct, but were a false statement constituting purely personal abuse.

The mere fact that the persons defamed are district judges is no excuse. Nor does it afford the appellant a license to defame them at will.

It is a well-settled principle of law that federal questions which rest upon an obviously false assumption are so plainly devoid of merit as to afford no basis for the exercise by the United States Supreme Court of its appellant jurisdiction over the state court of last resort. *Parker v. McLain*, 237 U.S. 469, 59 L. Ed. 1051. Mover emphasizes that the Supreme Court

of Louisiana found the statement of appellant contained in the bill of information to be a violation of LSA-R.S. 14:47-50 for the following reasons, which we quote from the Court's opinion:

> "In the instant matter, it cannot be gainsaid that the use of the words 'racketeer influences' when applied to anyone suggests and imputes that he has been influenced to practice fraud, deceit, trickery, cheating, and dishonesty.
>
> "The expression that the judges have enjoyed 300 days vacation out of 19 months suggests and connotes a violation of the 'Deadhead' statute, LSA-R.S. 14:138, Public Payroll Fraud.
>
> "Other expressions set out in the Bill of Information connote malfeasance in office. LSA-R.S. 14:-134, Art. IX, Sec. 1, La. Const. of 1921."

Chaplinsky v. New Hampshire, 62 S. Ct. 766, 315 U.S. 568, 86 L. Ed. 1031, held that the term "racketeer" is an epithet likely to provoke the average person to retaliation, and thereby cause a breach of peace.

CONCLUSION

For all of the foregoing reasons, appellant has failed to raise any substantial federal question, and the appeal should be dismissed, and the alternative plea for writs of certiorari should be denied.

In the alternative, the decision of the State Court should be affirmed as being in accordance with the Federal Constitution and the Federal jurisprudence.

Respectfully submitted,

JACK P. F. GREMILLION,
Attorney General,
State of Louisiana,
2201 State Capitol,
Baton Rouge, Louisiana.

M. E. CULLIGAN,
Assistant Attorney General,
State of Louisiana,
104 Supreme Court Bldg.,
301 Loyola Avenue,
New Orleans, Louisiana.

JOHN E. JACKSON, JR.,
Assistant Attorney General,
State of Louisiana,
104 Supreme Court Bldg.,
301 Loyola Avenue,
New Orleans, Louisiana.

CERTIFICATE

I, Michael E. Culligan, a member of the Bar of the United States Supreme Court, hereby certify that this 15th day of September, 1963, a copy of the above and foregoing motion was served on Eberhard P. Deutsch, Hibernia Bank Building, New Orleans 12, Louisiana, by depositing same in the United States Mail, postage prepaid.

Of Counsel.

LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
FEB 13 1964
JOHN F. DAVIS, CLERK

Supreme Court of the United States

OCTOBER TERM, 1963

No. [redacted] 4

JIM GARRISON,

Appellant.

versus

STATE OF LOUISIANA,

Appellee

On Appeal from the Supreme Court of Louisiana

BRIEF FOR APPELLANT

Eberhard P. Deutsch,
Hibernia Bank Building,
New Orleans 70112,
Attorney for Appellant.

Deutsch, Kerrigan & Stiles,
René H. Himel, Jr.,
Louis P. Trent,
Of Counsel.

INDEX

	Page
Opinions Below	1
Jurisdiction	1
Statutes Involved	2
Question Presented	3
Statement of the Case	5
Summary of Argument	9
Argument:	12
1—Louisiana's Criminal Defamation Law is Unconstitutional, at Least in its Attempted Application, as a Sedition Act, to Criticism of Judges	12
2—At All Events, Criticism of Judges May Not Constitutionally be Punished Without Trial by Jury, and Without Regard For the Clear-and-Present-Danger Test	34
3—Statutory Provision For the Defense of Truth Without Malice Does Not Render Constitutional the Application of the Louisiana Defamation Statute in This Case	43
Conclusion	47

TABLE OF AUTHORITIES

Page

Statutes:

Constitution of Louisiana, Article 7, Section 41 2
Constitution of the United States:
First Amendment ..2, 4, 9, 10, 11, 12, 16, 19, 24, 25, 27, 28, 29, 31, 36, 38, 39, 40, 41, 42, 45, 46, 47, 48
Sixth Amendment 38
Fourteenth Amendment ...2, 4, 29, 31, 39, 41, 46, 47, 48
Fox's Libel Law, 32 Geo. III, c. 60 .....16, 39
Lord Campbell's Libel Act, 6 & 7 Victoria, c. 96 22
La. RS 14:47 ..... 1, 2, 35
La. RS 14:48 .....3, 35, 43
La. RS 15:340 2
La. RS 15:341 2
La. RS 15:571.11 5
Scandalis Magnatum, De, 3 Edw. I, c. 34 ....12, 37
Sedition Law, Act of July 14, 1798, 1 Stat. 596 .....10, 16, 17, 18, 21, 22, 24, 28, 29, 39, 43, 45, 46, 47
28 USC 1257(2) 2

Cases:

Beauharnais vs Illinois, 343 US 250 (1952)..11, 23, 31, 32, 33, 34, 42, 43, 44
Bridges vs California, 314 US 252 (1941) ..30, 34, 35, 37, 38, 40
Cantwell vs Connecticut, 310 US 296 (1940) 41
Commonwealth vs Blanding, 3 Pick. 304 (Mass.-1825) 29
Craig vs Harney, 331 US 367 (1947) 34, 39, 47
Grosjean vs American Press Co., 297 US 233 (1936) 40
Hartzell vs United States, 322 US 680 (1944) .. 41

Page

The King vs Almon (1765) [Wilmot, Notes of Opinions and Judgments (1802) 270, 97 ER 94] 37
Libellis Famosis, De, 5 Coke's Reports 125a, 77 ER 250 (1605) 13
Near vs Minnesota, 283 US 697 (1931) 19
New York Trust Co. vs Eisner, 256 US 345 (1921) 35
Nye vs United States, 313 US 33 (1941) 39
Pennekamp vs Florida, 328 US 331 (1946) .30, 34, 48
Respublica vs Oswald, 1 Dall. 319 (Pa.-1788) ... 29
Roth vs United States, 354 US 476 (1957) 33
Schenck vs United States, 249 US 47 (1919) 41
State vs Klapprott, 127 NJL 395, 22 A2d 877 (1941) 42
Terminiello vs Chicago, 337 US 1 (1949) 42
Thornhill vs Alabama, 310 US 88 (1940) 33, 41
Tutchin, Trial of John, 14 Howell's State Trials 1095 (1704) 14
United States vs Callender, Wharton, State Trials, 718 17
United States vs Cooper, Wharton, State Trials, 679 17
United States vs Haswell, Wharton, State Trials, 684 17
United States vs Lyon, Wharton, State Trials, 333 16
Wood vs Georgia, 370 US 375 (1962) ..31, 34, 47, 48
Zenger, Trial of John Peter, 17 Howell's State Trials 675 (1735) 14, 24, 39

Other.

Adams, Letters to Pickering, July 24 and August 1, 1799, 9 Adams, Works (1854) 3, 5 18
Annals, 6th Cong., 1st Sess. (Jan., 1800) 22

Page

Berns, Freedom, Virtue & The First Amendment (1957) 32
Beveridge, Life of John Marshall (1944) 22
Brant, James Madison (1950) 19
Chafee, Freedom of Speech and Press (1955) .. 15
Chafee, Free Speech in the United States (1954) 14, 15, 16, 19, 23, 26, 32
Chenery, Freedom of the Press (1955) 15
Clear and Present Danger Re-examined, Note, 51 Columbia Law Review 98 (1951) 40
Constitutionality of the Law of Criminal Libel, Note, 52 Columbia Law Review 521 (1952) 14, 15, 23, 33, 39, 46
Cooley's Constitutional Limitations (8th ed., 1927) 16, 23, 26, 39, 44
Corwin, Freedom of Speech and Press Under the First Amendment, 30 Yale Law Journal 48 (1920) 15, 23
Corwin, Liberty Against Government (1948) .. 41
Deutsch, Freedom of the Press and of the Mails, 36 Michigan Law Review 703 (1938) 39
Edmunds, Struggle for Freedom (1946) 25
Emerson, Toward a General Theory of the First Amendment, 72 Yale Law Journal 877 (1963) 24, 27, 46
Fox, History of Contempt of Court (1927) 37
Fox, The King v. Almon, 24 Law Quarterly Review 266 (1908) 37, 38
Gay, James Madison (1950) 19
Heartman, John Peter Zenger (1934) 15
Hervey and Kelley, Some Constitutional Aspects of Statutory Regulation of Libels on Government, 15 Temple University Law Quarterly 453 (1941) 15
Holdsworth, History of English Law (1925) .. 40

Page

Hortensius (George Hay), An Essay on the Liberty of the Press (1799) 46
Howell's State Trials 14, 24, 39
Hudon, Freedom of Speech and Press in America (1963) 13, 29, 37, 47
Jackson (Attorney General Robert H.), Letter to Senator Tydings (1940), 87 Cong. Rec. 5836-37 (1941) 23
Jefferson, Letter to Mrs. John Adams (1804), 8 Writings of Jefferson (Ford ed., 1897) 309 22
Johnson, Freedom of the Newspaper Press, 200 Annals of the American Academy of Political and Social Science 60 (1938) ... 26
Kelly, Criminal Libel and Free Speech, 6 Kansas Law Review 295 (1958)..12, 24, 39, 44, 46
Kentucky Resolutions, 4 Elliott's Debates (1836) 566 18
Madison, Report on the Virginia Resolutions, 4 Madison's Works (1865) 515, 4 Elliott's Debates (1836) 572 .....9, 19-21, 41, 44
May, Constitutional History of England (1873) 14, 27
McNamara, Ragbag of Legal Quotations (1960) 29
Nelles and King, Contempt by Publication in the United States, 28 Columbia Law Review 401, 525 (1928) 16, 29, 36, 38
Pound, The Origin and Development of the Bill of Rights, in the Newspaper-Radio Committee's "Freedom of the Press" (1942) ..25, 27
Romilly, A Fragment on the Constitutional Power and Duty of Juries Upon Trials for Libels (1784) 15
Rutherford, John Peter Zenger (1904) 15
Schofield, Essays on Constitutional Law and Equity (1921) 44

Page

Schuyler, The Liberty of the Press in the American Colonies (1905) 14, 25, 27
Shurtleff, Records of the Governor and Company of the Massachusetts Bay, 1628-1636 (1853-54) 15
Smith, Freedom's Fetters (1956) 26
Stephen, History of the Criminal Law of England (1883) 27, 28, 40
Virginia House of Delegates, Journal of 1799-1800 Session 20
Virginia Resolutions, 4 Elliott's Debates (1836) 554 18-19
Warren, History of the American Bar (1911) .. 29
Wharton, State Trials (1849) 16, 17, 18
Wilmot, Notes of Opinions and Judgments 270 (1802) 37
Wortman, Political Enquiry and the Liberty of the Press (1800) 24, 44

Supreme Court of the United States

OCTOBER TERM, 1963

No. 400

JIM GARRISON,

Appellant

versus

STATE OF LOUISIANA,

Appellee

BRIEF FOR APPELLANT

Opinions Below

The opinion of the Supreme Court of Louisiana (R 118) is reported at 244 La. 787, 154 So.2d 400. That of the Criminal District Court for the Parish of Orleans (R 610), the court of first instance, has not been reported.

Jurisdiction

This is a criminal prosecution for defamation, brought against appellant pursuant to Section 47 of Title 14 of the Louisiana Revised Statutes.

The judgment of the Supreme Court of Louisiana was rendered on June 4, 1963. R 118, 173. Rehearing was denied, and the judgment became final and executory, on June 28, 1963. R 187. The notice of appeal to this Court was filed in the Supreme Court of Louisiana on July 11, 1963. R 190.

This Court has jurisdiction of the appeal under 28 USC 1257(2).

Statutes Involved

The appeal involves the validity, under the First and Fourteenth Amendments to the Constitution of the United States, of the following Louisiana constitutional and statutory provisions as applied to appellant under the particular facts of this case:

1—Constitution of Louisiana, Article 7, Section 41, 2 West's Louisiana Statutes Annotated—Constitution, 382:

> "All (criminal) cases in which the punishment may not be at hard labor shall, until otherwise provided by law, be tried by the judge without a jury."*

2—Louisiana Revised Statutes, Title 14, Sections 47 and 48, 9 West's Louisiana Statutes Annotated—Revised Statutes, 280:

> "§47. Defamation
>
> "Defamation is the malicious publication or expression in any manner, to anyone other than the party defamed, of anything which tends:

* Section 340 of Title 15 of the Revised Statutes of Louisiana provides: "Every misdemeanor shall be triable by the judge without the intervention of a jury"; and section 341 defines a misdemeanor as "an offense, the punishment of which is necessarily a fine or imprisonment in the parish jail or both".

"(1) To expose any person to hatred, contempt, or ridicule, or to deprive him of the benefit of public confidence or social intercourse; or

"(2) To expose the memory of one deceased to hatred, contempt, or ridicule; or

"(3) To injure any person, corporation, or association of persons in his or their business or occupation.

"Whoever commits the crime of defamation shall be fined not more than three thousand dollars, or imprisoned for not more than one year, or both."

"§48. Presumption of malice

"Where a non-privileged defamatory publication or expression is false it is presumed to be malicious unless a justifiable motive for making it is shown.

"Where such a publication or expression is true, actual malice must be proved in order to convict the offender."

Question Presented

Appellant, District Attorney for the Parish of Orleans, made a statement to the press in reply to a statement, critical of appellant, given to the press by a recently retired Judge of the Parish Criminal Court. Appellant's statement charged the Judges of the Court with

responsibility for a large backlog of untried criminal cases, with enjoying excessive vacations, with lack of concern at the paucity of trials for commercialized vice in past years, with lack of sympathy toward appellant's use of investigators to uncover vice conditions, with blocking appellant's investigations of such conditions, with "misrepresentation of facts", and that the Judges' attitude "raises interesting questions about the racketeer influences on our eight vacation-minded judges".

The holding of the Supreme Court of Louisiana, in affirming appellant's conviction of criminal defamation for making the foregoing statements, that the First Amendment to the Constitution of the United States, as embodied in the Fourteenth, does not render invalid the State's criminal-defamation statute, even when applied as a sedition act for libel of the Judges, in a prosecution in which trial by jury and application of the clear-and-present-danger test were denied, presents the following question for decision by this Court:

> Whether the First and Fourteenth Amendments to the Constitution of the United States permit the State of Louisiana, under any circumstances, so to apply its constitutional provision for trial of misdemeanors without a jury, and its statutory provision making criminal defamation a misdemeanor, as to convict and sentence a parish District Attorney, without trial by jury, for publication of a statement critical of the official conduct of the Judges of the parish Criminal Court, especially when the District Attorney's statement plainly involved

no clear and present danger, either to preservation of the peace or to the proper administration of justice.

Statement of the Case

Following his induction into office as District Attorney of the Parish of Orleans (coterminous with the City of New Orleans) in May 1962, appellant made intensive efforts to reduce the accumulated backlog of cases he found awaiting prosecution, and embarked also on a campaign of investigation and prosecution of commercial vice conditions in New Orleans' Bourbon and Canal Street districts. R 289, 300, 371, 459, 475.

Under Louisiana law (Revised Statutes, Title 15, Section 571.11), all fines and forfeitures imposed in criminal cases in Orleans Parish are deposited by the District Attorney in a special account. These funds are to be used, in his discretion, to defray the expenses of the Criminal District Court of the Parish, and of the District Attorney's office. The statute provides further that "no money shall be paid out of this fund except upon motion by the district attorney of Orleans Parish and approval by a judge of the criminal district court of Orleans Parish".

Since re-enactment of the cited statute in 1959, substantially in its present form, such funds had been used, in part, to pay for investigations by the District Attorney's office; individual Judges had always approved disbursements from the special account for this purpose; and in the opening stages of appellant's

investigation of vice conditions, individual Judges had approved his use of the fund to defray the costs thereof. R 376, 477, 481-82.

In August 1962, however, the Judges announced that no further disbursements from the fund would be approved until October, when all of the Judges would have returned from summer vacation, and a new system for administering the fund could be established. R 315-16.

On October 4, 1962, the Judges met *en banc*. On the afternoon of that day, appellant was invited to join the meeting. When he arrived, he was advised that although the relevant statute provides, as stated, for disbursements from the special fund on "approval by a judge" of the Court, no further motions for such disbursements would be approved except with the concurrence of not less than five of the eight Judges. R 294-95, 492-93.

On October 26, 1962, the Judges again met *en banc*, and determined that no further disbursements for investigations by the District Attorney's office would be approved (R 385-86), and none have been approved since October 4, 1962 (R 489).[1]

[1] In testifying as witnesses at the trial, the Judges stated (as summarized by the Trial Judge in the case of one of their number), that they "did not believe the statute authorizing the use of the funds in the manner used by the Defendant was constitutional" (R 617); but the Trial Judge concluded: "I do not believe this was the motivating influence causing the Judges to adopt the rule that they did" (R 629).

On November 1, 1962, a recently retired Judge of the Court made a statement to the press, critical of appellant. R 308.

The following day, appellant, when asked by reporters whether he had any comment on this statement, made the remarks which are at issue in this case. R 198-203. Those portions of appellant's statement which may fairly be considered to constitute the gravamen of the complaint ultimately made, excluding repetitions, are as follows:

> "Apparently the judges have called in all their reserves. Whatever their resulting statement turns out to be, I doubt if the facts will be much more accurate than those in Judge O'Hara's statement. I will cite some glowing examples of misrepresentation of facts. . . . .
>
> "(After making reference to the backlog of untried criminal cases in Orleans Parish, appellant continued): Inasmuch as the judges have been the only continuing caretakers of the criminal courts operation over the years, it is pretty obvious where the real responsibility lies for the revised backlog of untried cases. District attorneys come and go every four years but the judges and the backlog always seem to be here . . .
>
> "(After referring to Judge O'Hara's charge that the District Attorney's investigators were not made available in court, appellant continued): Obviously this is nothing more than a petulant slap at our use of investigators to uncover vice conditions in the city—an operation with which the judges have shown a re-

markable lack of sympathy.[2] As a matter of fact, so opposed have the judges been to our vice investigations that they completely blocked us from our Bourbon Street investigation of B-drinking and other forms of vice . . .

"The judges have now made it eloquently clear where their sympathies lie in regard to aggressive vice investigations by refusing to authorize use of the DA's funds to pay for the cost of closing down the Canal Street clip joints . . .

"Again the message is clear: 'Don't rock the boat, son. You are not supposed to investigate anything'. This raises interesting questions about the racketeer influences on our eight vacation-minded judges . . .

"Actually, the time for Judge O'Hara to be active in his concern for the district attorney's office was during the preceding four years when there was a complete breakdown of vice prosecution and prosecution of cases in every area. So complete was this breakdown that in the last several years there were almost no trials of any kind for commercialized vice. The judge at no time expressed any concern for the breakdown of the prosecution office . . .

"It is incredible that in this country in 1962 that a man could wait 19 months before his case is disposed of, during which period the judge enjoyed over 300 days' vacation . . ." R 120-24.

[2] One of the Judges admitted, under cross-examination at the trial, that his "father was in the lottery business before he died", and it was shown that his mother had sold this business ten years after the Judge had taken office as such. R 485, 497.

The statement related solely to the Judges' official conduct. At no point did it refer to the private conduct of any of them.

The Attorney General of Louisiana filed a bill of information, charging appellant with defamation of all eight of the Judges. R 26-32. On the same day, the Supreme Court of Louisiana appointed a District Judge from another district as Judge *ad hoc* to try the case against appellant. R 25.

The trial Judge, although holding that "the defamatory statement might not have been issued without some provocation" (R 638), found appellant guilty, and sentenced him to pay a fine of $1,000 or to serve four months' imprisonment. R 634, 638-39, 640. Appellant appealed the conviction and sentence to the Supreme Court of Louisiana, which affirmed. R 118, 173; 244 La. 787, 154 So.2d 400.

Summary of Argument

The historical developments underlying the First Amendment's protection of speech and press, indicate that punishment of defamation as crime is not reconcilable with the purposes of that Amendment's guarantees, especially in light of the fact that criminal-libel statutes, largely fallen into disuse, are being revived as sedition acts to support prosecutions for criticism of public officials.

In his *Report on the Virginia Resolutions* of 1798, James Madison, author and father of the First Amend-

ment adopted only seven years earlier, insisted that the Sedition Act of that year, as "a law inflicting penalties on printed publications, would have a similar effect with a law authorizing a previous restraint on them. It would seem a mockery to say, that no law should be passed, preventing publications from being made, but that laws might be passed for punishing them in case they should be made." 4 *Elliott's Debates* (1836) 572, 596.

This conclusion seems particularly inescapable when the assertedly seditious speech relates to criticism of the official conduct of judges, by another public officer closely involved in the administration of justice.

At all events, this Court's decisions that the First Amendment requires application of the clear-and-present-danger rule in contempt prosecutions for criticism of judges, are equally applicable to criminal-libel prosecutions for criticism of judges.[3]

Logic belies the concept that the constitutional protection established by this Court can be circumvented merely by denominating a prosecution "criminal libel" rather than "contempt of court".

History likewise rejects the acceptability of a different constitutional rule in criminal-libel, from that in contempt, cases; contempt and criminal-libel processes having evolved concurrently in England and in

[3] The term "criminal libel" is used as a generic one in this brief, without reference to traditional distinctions between libel, slander and other forms of defamation.

the American colonies, as governmental weapons for suppression of speech critical of public officials, and having been repudiated by the constitutional developments fostering free speech in America.

Denial of the right to punish criticism of a judge as contempt of court was based, in part at least, on the view that fear of summary trial and punishment by the judge for contempt, was in effect prior restraint violative of the guaranty of free speech. This development secured the right of trial by jury to those charged with defaming magistrates.

This Court's opinion in *Beauharnais vs Illinois* is erroneous, and should be over-ruled; but, even if that opinion is still considered correct, it cannot be construed as removing criticism of government officials from the area of constitutionally-protected speech. Any interest of the State in protecting the reputations of its officers must yield to the higher First-Amendment interest in unfettered discussion of their official conduct.

Provision, in a criminal-libel statute, for the defense of truth without malice, is not a constitutionally valid substitute for the clear-and-present-danger test. Any different conclusion would reduce the First Amendment's guaranties to the protection of speech so inoffensive as to require no protection, leaving unshielded the controversial and dissentient utterances which it was the fundamental purpose of the First Amendment to promote.

Argument

1—*Louisiana's Criminal Defamation Law is Unconstitutional, at Least in its Attempted Application, as a Sedition Act, to Criticism of Judges*

The unconstitutionality of all criminal-libel laws, at least to the extent that their sanctions may be invoked to suppress criticism of officers of government, emerges with clarity from the historical evolution of the First Amendment's guarantees of freedom of speech and of the press.

Criminal-libel process is, historically, the root-evil from which all of our present free-speech principles have really stemmed. In the very opening sentence of his article on *Criminal Libel and Free Speech*, 6 Kansas Law Review 295 (1958), John Kelly said: "The most ancient and direct instrument for the legal control of communications has been the law of criminal libel."

In the words of a recent commentator, "to trace the history of this body of law (free speech) in England, the starting point is the statute *De Scandalis Magnatum* enacted in 1275, which was political in nature and had as its object the preservation of the realm rather than the redress of private wrong. It provided for imprisonment of anyone who should disseminate false news or 'tales' from which discord might result between the king and his people. The statute was re-enacted

in 1378 to include peers, prelates, justices and various other officials . . . . The re-enactments of 1554 and 1559 added 'seditious words' to the statute." Hudon, *Freedom of Speech and Press in America* (1963) 8.

The original design of the statute was to punish "political scandal"; "as the law was administered by the Court of Star Chamber, the security of the state was regarded as imperilled by seditious libel against the rulers of the state." Hudon, *op. cit.*, 8, 10. Later, as the concept that public officials should be exempt from criticism lost ground, a new justification was asserted for criminal-libel actions—preservation of the peace.

By the time of the leading Star-Chamber case, *De Libellis Famosis*, at the beginning of the seventeenth century, both bases for such prosecutions were considered well-established, though sedition—especially as to judges—was still the preferred ground for complaint: "Every libel (which is called *famosus libellus, seu infamatoria scriptura*) is made either against a private man, or against a magistrate or public person. *If it be against a private man it deserves a severe punishment*, for although the libel be made against one, yet it incites all those of the same family, kindred, or society to revenge, and so tends *per consequens* to quarrels and breach of the peace, and may be the cause of shedding of blood, and of great inconvenience: *if it be against a magistrate, or other public person, it is a greater offense*; for it concerns not only the breach

of the peace, but also the scandal of the Government; for what greater scandal of Government can there be than to have corrupt or wicked magistrates to be appointed and constituted by the King to govern his subjects under him? And greater imputation to the State cannot be, than to suffer such men to sit in the sacred seat of justice, or to have any meddling in or concerning the administration of justice." 5 Coke's Reports 125a, 77 ER 250 (1605).

Following abolition of censorship in seventeenth-century England, criminal-libel trials became the favored governmental weapon, both in the mother country and in the American colonies, against the free dissemination of critical ideas and controversial beliefs.[4] Sedition, rather than breach of the peace, continued to be the acknowledged principal danger guarded against by such actions. See, *e.g.*, the charge to the jury in the *Trial of John Tutchin*, 14 Howell's State Trials 1095, 1128 (1704).

One of the aspects of this persisting use of the criminal-libel proceeding to suppress freedom of expression, was the opportunity it afforded for striking some of the great blows for liberty in Anglo-American history, by the tough-minded juries who acquitted William Penn (on a related charge) and the Seven Bishops in England, and John Peter Zenger in colonial

[4] Chafee, *Free Speech in the United States* (1954) 18, 499-504; Schuyler, *The Liberty of the Press in the American Colonies* (1905) 74-76: 2 May, *Constitutional History of England* (1873) 243; Note: *Constitutionality of the Law of Criminal Libel*, 52 Columbia Law Review 521, 523 (1952).

America, in defiance of contrary directions by the court.[5]

These verdicts were, strictly speaking, extra-legal when rendered, since even after the responsibility for prosecution of libels devolved on the common-law courts, Star-Chamber influence placed severe limits on the jury's role. It was reserved to the court to determine whether the words at issue were punishable, the jury being charged only to find whether the accused had in fact published them. Chafee, *Free Speech in the United States* (1954) 499-504. See Romilly, *A Fragment on the Constitutional Power and Duty of Juries Upon Trials for Libels* (1784) 14: When the Star Chamber fell, "some of the judges in Westminster Hall were of opinion that an opportunity offered, not only of extending the practice and the jurisdiction of their court over an object in some degree new, but of encroaching at the same time on the province of the jury".

[5] The constitutional importance of Zenger's acquittal is amply documented. Gouverneur Morris called it "the germ of American freedom, the morning star of that liberty which subsequently revolutionized America." Rutherford, *John Peter Zenger* (1904) 131. And "the verdict of this jury has been called 'the greatest victory encompassed in America by the democratic spirit before the signing of the Declaration of Independence and the one that made all others possible.'" Heartman, *John Peter Zenger* (1934) 60. See also Chafee, *Freedom of Speech and Press* (1955) 40; Chenery, *Freedom of the Press* (1955), Ch. VI; Corwin, *Freedom of Speech and Press Under the First Amendment*, 30 Yale Law Journal 48, 51 (1920); Hervey and Kelley, *Some Constitutional Aspects of Statutory Regulation of Libels on Government*, 15 Temple University Law Quarterly 453, 465 (1941); Note: *Constitutionality of the Law of Criminal Libel*, 52 Columbia Law Review 521, 524 (1952). Roger Williams was banished from Massachusetts for the crime of disseminating "newe and dangerous opinions, against the aucthoritie of magistrates". 1 Shurtleff, *Records of the Governor and Company of the Massachusetts Bay, 1628-1686* (1853-54) 160.

The reaction to the long years of censorship and punishment of critical speech, which had been building up in the American colonies throughout the eighteenth century, finally burst into revolutionary expression toward its end; and then, in 1791, the United States adopted their Bill of Rights, which included the speech and press guarantees of the First Amendment to the Constitution.[6]

Of controlling significance is the ensuing history of the brief American experience with a Sedition Law, which "wrecked the Federalist party" and thereafter "made Sedition Acts unthinkable".[7] It may safely be said that no other national legislative enactment has aroused such violent opposition, or left so clear-cut a popular verdict of its invalidity.

The first person to be indicted under the Sedition Act was Congressman Matthew Lyon of Vermont. He was charged with having endeavored "to stir up sedition and to bring the President and Government of the United States into contempt" for having said that John Adams had "an unbounded thirst for ridiculous pomp", and for expressing surprise at the fact that Congress had not issued "an order to send him to the mad house". He was sentenced to prison for four months and to pay a fine of $1000. Wharton, *State Trials* (1849) 333-34, 339.

---

[6] Even in England, in the following year, Parliament enacted Fox's Libel Law, which, by recognizing the jury's right to return a general verdict of not guilty in criminal-libel trials, removed all limitations on the jury's function in such cases. 32 Geo. III, c. 60.

[7] Chafee, *Free Speech in the United States* (1954) 27; 2 *Cooley's Constitutional Limitations* (8th ed., 1927) 900; Nelles and King, *Contempt by Publication in the United States*, 28 Columbia Law Review 401, 406 (1928).

Anthony Haswell, editor of a Vermont newspaper, printed an advertisement addressed "to the enemies of political persecutions in the western district of Vermont", to raise money to pay Lyon's fine. In the advertisement, Haswell referred to the United States marshal holding Lyon as "a hard-hearted savage". He was thereupon indicted for sedition, and Justice Patterson who had presided over the trial of Lyon, charged the jury that they must find Haswell guilty if they found that his "intent was defamatory". He was fined $200 and imprisoned for two months. *Id.*, at p. 684, 685-86.

Dr. Thomas Cooper, a Pennsylvania editor, was indicted under the Sedition Law for attacking the President with a statement that Mr. Adams "had not yet interfered . . . to influence the decisions of a court of justice". He was convicted and sentenced to pay a fine of $400, and to serve six months in prison, following Justice Chase's charge to the jury that "if a man attempts to destroy the confidence of the people in their officers . . . he effectually saps the foundation of the government". *Id.*, at p. 679.

James Thompson Callender, author of *The Prospect Before Us*, was indicted for "libel" under the Sedition Act for having stated that President Adams "was a professed aristocrat and had proved faithful and serviceable to the British interest" in sending Marshall, Pinckney and Gerry to France. William Wirt, as counsel for Callender, argued to the jury that if they believed the Sedition Law to be unconstitutional, they must find the defendant not guilty. Justice Chase ordered Wirt to sit

down, and instructed the jury, in a charge reminiscent of that given in the trial of John Peter Zenger sixty-five years earlier, that if they found the fact of utterance, they must find the defendant guilty. *Id.*, at p. 718.

Citation of such cases could be multiplied. Suffice it to say that President Adams himself urged the institution of such prosecutions, and even went so far as to suggest that the editor of the Republican Party's organ, *The Aurora*, ought to be deported because of its "uninterrupted stream of slander on the American government". Letters to Pickering, July 24 and August 1, 1799, 9 Adams, *Works* (1854) 3, 5.

As Federalist judges invoked the Sedition Law to throttle criticism of their party's administration, the Kentucky and Virginia legislatures adopted protesting resolutions drawn, respectively, by Thomas Jefferson and James Madison.

The Kentucky Resolutions declared that, under the First Amendment to the Constitution, "libels, falsehood and defamation, equally with heresy and false religion, are withheld from the cognizance of Federal tribunals, (and) that therefore the (Sedition) act of the Congress of the United States, passed on the 14th of July, 1798 . . . which does abridge the freedom of the press, is not law, but is altogether void and of no force". 4 *Elliott's Debates* (1836) 566-67.

The following month, Virginia echoed these sentiments in even stronger terms, charging that the Sedi-

tion Act "exercises . . . a power not delegated by the constitution, but on the contrary, expressly and positively forbidden by one of the amendments thereto; a power, which more than any other, ought to produce universal alarm, because it is levelled against the right of freely examining public characters and measures, and of free communication among the people thereon, which has ever been justly deemed the only effectual guardian of every other right." 4 *Elliott's Debates* (1836) 554-55.

In his ensuing *Report on the Virginia Resolutions*, the "Father of the Constitution", who had literally drafted the First Amendment with his own hand,[8] set forth that "in the United States, the great and essential rights of the people are secured against legislative, as well as executive ambition. They are secured, not by laws paramount to prerogative, but by constitutions paramount to laws. This security of the freedom of the press requires, that it should be exempt, not only from previous restraint by the Executive, as in Great Britain, but from legislative restraint also; and this exemption, to be effectual, must be an exemption, not only from the previous inspection of licensers, but from the subsequent penalty of laws." 4 *Elliott's Debates* (1836) 572, 597.

Madison continued with his celebrated justification for his stand, quoted with approval by this Court in *Near vs Minnesota*, 283 US 697, 718 (1931): "Some

[8] See Gay, *James Madison* (1898) 84; 3 Brant, *James Madison* (1950) *passim*; Chafee, *Free Speech in the United States* (1954) 19.

degree of abuse is inseparable from the proper use of everything; and in no instance is this more true, than in that of the press. It has accordingly been decided by the practice of the States, that it is better to leave a few of its noxious branches to their luxuriant growth, than by pruning them away, to injure the vigor of those yielding the proper fruits. And can the wisdom of this policy be doubted by anyone who reflects that to the press alone, chequered as it is with abuses, the world is indebted for all the triumphs which have been gained by reason and humanity, over error and oppression; who reflect, that to the same beneficent source, the United States owe much of the lights which conducted them to the ranks of a free and independent nation; and which have improved their political system into a shape so auspicious to their happiness. Had 'Sedition Acts,' forbidding every publication that might bring the constituted agents into contempt or disrepute, or that might excite the hatred of the people against the authors of unjust or pernicious measures, been uniformly enforced against the press; might not the United States have been languishing at this day, under the infirmities of a sickly confederation? Might they not, possibly, be miserable colonies, groaning under a foreign yoke?" *Id.*, at p. 598.

Madison's Report, which received the explicit approval of the Virginia House of Delegates,[9] concluded that "the article of the amendment, instead of supposing in Congress a power that might be exercised over the press, provided its freedom was not abridged.

[9] Journal of the House of Delegates of the Commonwealth of Virginia, 1799-1800 Session, page 72, January 7, 1800.

was meant as a positive denial to Congress, of any power whatever on the subject . . . that an exercise of any such power, would be manifest usurpation . . . that no power whatever over the press, was supposed to be delegated by the Constitution, as it originally stood, and that the amendment was intended as a positive and absolute reservation of it." *Id.*, at pp. 598-99.

To the rhetorical question: "Is then the federal government . . . destitute of every authority for restraining the licentiousness of the press, and for shielding itself against the libellous attacks which may be made on those who administer it?", the Report replied that "the constitution alone can answer this question. If no such power be expressly delegated, and if it be not both necessary and proper to carry into execution an express power, above all, if it be expressly forbidden, by a declaratory amendment to the constitution, the answer must be that the federal government is destitute of all such authority. . . . The question does not turn either on the wisdom of the constitution, or on the policy which gave rise to its particular organization. It turns on the actual meaning of the instrument by which it has appeared that a power over the press is clearly excluded, from the number of powers delegated to the federal government." *Id.*, at p. 600.

When, later, a resolution to repeal the second section of the Sedition Act came on for consideration in the House of Representatives, John Marshall, then recently

elected to that body from Virginia, cast the decisive vote for repeal. As stated by Beveridge: "Taking into account the prominence as a Federalist leader which Marshall had now achieved, his vote against the reprobated section of the Sedition Law was a supreme act of independence of political ties and party discipline. He had been and still was the only Federalist to disapprove, openly, the Alien and Sedition Laws." 2 *Life of John Marshall* (1944) 451.

While the foregoing resolution became involved in parliamentary maneuvers under which it never became effective (see *Annals*, 6th Cong., 1st Sess., Jan., 1800, 404-25), the Sedition Law lapsed into oblivion with Jefferson's accession to the Presidency; and all convicted offenders were pardoned "because I considered, and now consider, that law to be a nullity, as absolute and as palpable as if Congress had ordered us to fall down and worship a golden image". Letter to Mrs. John Adams (1804), 8 *Writings of Jefferson* (Ford ed., 1897) 309.

Criminal-libel prosecutions then fell into general disfavor and desuetude in this country, and even (at least following adoption, in 1843, of Lord Campbell's Libel Act admitting the defense of truth) in England.

As expressed by Professor Corwin: "In the long run the protest against the Sedition Act accomplished two results: It laid to rest the idea of a national common law of seditious libel of which the act was merely declaratory; while within the States, it rendered prose-

cution for political libels less and less frequent until they ceased altogether, leaving officials dependent for their protection on the ordinary law of slander and libel." *Freedom of Speech and Press Under the First Amendment*, 30 Yale Law Journal 48, 51 (1920). And see Chafee, *Free Speech in the United States* (1954) 18; 2 *Cooley's Constitutional Limitations* (8th ed., 1927) 898.

The few abortive federal prosecutions for political comment assertedly defamatory, are collected in Justice Jackson's dissent in *Beauharnais vs Illinois*, 343 US 250, 289-90 (1952). It has long since become the settled policy of the United States Government not to prosecute under the District of Columbia's criminal-libel law for criticism of government officials, because such prosecutions "would constitute embarrassment not consistent with our support of freedom of the press". *Letter of June 11, 1940 from Attorney General Robert H. Jackson to Senator Millard E. Tydings*, quoted in 87 *Cong. Rec.* 5836-37.

Criminal-libel statutes, considered largely to have fallen into obsolescence during the nineteenth century throughout the United States, have recently been revived and employed as sedition acts for prosecution of asserted defamation of public officials.[10]

This would seem to be persuasive indication that, of the traditional justifications for such proceedings,

[10] "The criminal libel cases of the present day indicate, however, that this almost obsolete action is being used by the authorities as a form of reprisal against those who criticize misconduct in office." Note: *Constitutionality of the Law of Criminal Libel*, 52 Columbia Law Review 521, 533 (1952).

preservation of magistrates from seditious utterances, rather than preservation of the peace, still prevails, which it evidently did in the case at bar, as the real motivating factor for criminal-libel actions.

It may fairly be stated that "under modern conditions, when the rule of law is generally accepted as a substitute for private physical measures, it can hardly be urged that the maintenance of peace requires a criminal prosecution for private defamation. . . . Criminal libel, when resorted to, can only result in suppressing unpopular expression. It would not be greatly different in its impact than employment of the law of seditious libel."[11]

As the preceding quotation indicates, it is the uniform view of constitutional writers, based on the *Zenger* trial, the historical developments in the struggle for free speech at the turn of the eighteenth century. the fact that prosecutions for criminal libel were the chief means employed for suppression of publications when the Bill of Rights was adopted, and the protests against, and the fate of, the Sedition Law, that it was the intention of the framers of the First Amendment that "both censorship and seditious libel are rejected. and prosecutions for criticism of the government, without direct incitement to law-breaking, are made impossible in the United States". Kelly, *Criminal Libel and*

[11] Emerson. *Toward a General Theory of the First Amendment*, 72 Yale Law Journal 877, 924 (1963). "Criminal prosecutions for libels can never be necessary to preserve the public tranquility". Wortman, *Political Enquiry and the Liberty of the Press* (1800) 253.

Free Speech, 6 Kansas Law Review 295, 310 (1958). Accord: Edmunds, *Struggle for Freedom* (1946) 100-103.

Dean Pound states that "in one English case a man said that a certain Justice of the Peace was a buffle-headed fellow, and he was prosecuted for that as a misdemeanor, and convicted. It was that sort of thing that led the Colonies, just as soon as they could make a frame of government for themselves, to put these provisions with reference to the liberty of the press in their Bill of Rights." *The Origin and Development of the Bill of Rights,* in the Newspaper-Radio Committee's *Freedom of the Press* (1942) 96.

In his *Liberty of the Press in the American Colonies* (1905), Schuyler similarly traced the historical evolution of our First Amendment guarantees: "The press in all the colonies early assumed a position of antagonism to the constituted authority, and in return the government took every opportunity to hurt it by means of prosecutions in the courts or inquisitorial proceedings before the Governor and his Council. It is interesting to note however that these proceedings lost almost all their terrors as the period of the Revolution approached, for the press received more and more the support of the people, who learned to appreciate the wide circulation which the newspaper gave to the new doctrines; thus we constantly find the grand juries refusing to find true bills against the printers, in this way reducing the Governor to the use of Informations which were looked on with suspicion by the people and seldom resulted in a verdict of Guilty." Page 75.

Judge Cooley agrees that "an examination of the controversies which have grown out of the repressive measures resorted to for the purpose of restraining the free expression of opinion will sufficiently indicate the purpose of the guaranties which have since been secured against such restraints in the future. Except so far as those guaranties relate to the mode of trial, and are designed to secure to every accused person the right to be judged by the opinion of a jury upon the criminality of his act, their purpose has evidently been to protect parties in the free publication of matters of public concern, to secure their right to a free discussion of public events and public measures, and to enable every citizen at any time to bring the government and any person in authority to the bar of public opinion by any just criticism upon their conduct in the exercise of the authority which the people have conferred upon them. . . . If we are correct in this, it would not be in the power of the State legislature to pass laws which should make mere criticism of the constitution or of the measures of government a crime, however sharp, unreasonable, and intemperate it might be." 2 *Constitutional Limitations* (8th ed., 1927) 885, 901-902.[12]

Limitation of constitutional protection to communication of matters of public concern, while defensible in

[12] "Except in time of war . . . the American newspaper press, then, may be said to be confirmed in the right to criticize public officials and their acts. . . . This freedom was the field on which the historical combats for freedom of the press were fought. It is the right to criticize the government that has been championed in every great defense of free speech and a free press." Johnson, *Freedom of the Newspaper Press*, 200 Annals of the American Academy of Political and Social Science 60, 64 (1938). Accord: Smith, *Freedom's Fetters* (1956) 431; Chafee, *Free Speech in the United States* (1954) 18, 21, 149-52.

theory, would, it is submitted, be dangerous in practice; since such a qualification, like the "good motives" test discussed at page 43 below, would lend itself to evasion of, in the guise of compliance with, the protective principle.

The only way in which speech can be protected adequately against governmental restriction, is by striking down all statutes whose aim is punishment of speech as defamation, particularly when the statute is susceptible of invocation by those in power to avenge criticism of officers of government. Thus, "the prior balancing in favor of protecting expression, embodied in the First Amendment, here compels acceptance of the legal doctrine that criminal libel laws are invalid". Emerson, *Toward a General Theory of the First Amendment*, 72 Yale Law Journal 877, 924 (1963).

There is, after all, no difference in theory or effect between a "defamation" prosecution, and a "seditious libel" prosecution, for criticism of public officials. The accepted definition of "seditious libel" is simply "written censure upon public men for their conduct as such". 2 Stephen, *History of the Criminal Law of England* (1883) 348.[13]

[13] "A seditious libel was nothing but a publication that the government didn't like, it criticized the conduct of the government or some particular official." Pound, *The Origin and Development of the Bill of Rights*, in the Newspaper-Radio Committee's *Freedom of the Press* (1942), 93. "An attack on the dominant party was held by the courts to be a libel". Schuyler, *The Liberty of the Press in the American Colonies* (1905) 76. "Every one was a libeller who outraged the sentiments of the dominant party." 2 May, *Constitutional History of England* (1873) 244.

Ultimate constitutional rejection of such prosecutions in England was grounded on the principle that "the practical enforcement of this (seditious-libel) doctrine was wholly inconsistent with any serious public discussion of political affairs . . . and so long as it was recognized as the law of the land, all such discussion existed only on sufferance". 2 Stephen, *History of the Criminal Law of England* (1883) 348.

This principle obviously applies equally to prosecutions, under ordinary criminal-libel laws (if valid at all under the First Amendment), for seditious defamation of public officials in the United States.

In this country, the perils attributed to suppression of criticism of the official conduct of judges, especially when leveled by another government officer involved in the administration of justice, emerge sharply from the history of constitutional evolution in this area, from this Court's repeated reversals of contempt convictions for such criticism, and from reiterated expressions by members of this Court.

One of the most notorious free-speech incidents in the period which saw the adoption and quick repudiation of the Sedition Law, was the indictment of a Boston editor, in 1801, for calling Chief Justice Dana of Massachusetts "a tyrant judge" who administered "that execrable engine of tyrants, the Common Law of

England". See Warren, *History of the American Bar* (1911) 237.[14]

Hudon traces the abuses of the Sedition Law itself (*Freedom of Speech and Press in America* (1963) 48-55); and the story of early contempt convictions for criticism of authoritarian judges, culminating in the celebrated sentencing of Luke Lawless by Judge Peck, and the latter's ensuing impeachment, is outlined in Nelles and King, *Contempt by Publication in the United States*, 28 Columbia Law Review 401, 409-31 (1928).

In 1898, Mr. Justice Brewer made his famous statement that "it is a mistake to suppose that the Supreme Court is either honored or helped by being spoken of as beyond criticism. On the contrary, the life and character of its justices should be the object of constant watchfulness by all, and its judgments subject to the freest criticism. The time is past in the history of the world when any living man or body of men can be set on a pedestal and decorated with a halo. True, many criticisms may be, like their authors, devoid of good taste, but better all sorts of criticism than no criticism at all. The moving waters are full of life and health; only in the still waters is stagnation and death." McNamara, *Ragbag of Legal Quotations* (1960) 274.

[14] Such libel prosecutions as this, and as *Respublica vs Oswald*, 1 Dall. 319 (Pa.-1788) and *Commonwealth vs Blanding*, 3 Pick. 304 (Mass.-1825), long antedated both the adoption of the Fourteenth Amendment, and this Court's holdings that that Amendment extended the First Amendment's prohibitions to State action; and accordingly, these decisions are no authority for a present day holding of constitutionality of State criminal-libel laws.

Although he dissented from this Court's contempt reversal in *Bridges vs California*, Mr. Justice Frankfurter made plain his recognition of the principle that "judges as persons, or courts as institutions, are entitled to no greater immunity from criticism than other persons or institutions. Just because the holders of judicial office are identified with the interests of justice, they may forget their common human frailties and fallibilities. There have sometimes been martinets upon the bench as there have also been pompous wielders of authority who have used the paraphernalia of power in support of what they called their dignity. Therefore judges must be kept mindful of their limitations, and of their ultimate public responsibility, by a vigorous stream of criticism expressed with candor however blunt." 314 US at 289.

Justice Murphy, concurring in the *Pennekamp* contempt decision, similarly pointed out that "judges should be foremost in their vigilance to protect the freedom of others to rebuke and castigate the bench, and in their refusal to be influenced by unfair or misinformed censure. Otherwise freedom may rest upon the precarious base of judicial sensitiveness and caprice. And a chain reaction may be set up, resulting in countless restrictions and limitations upon liberty." 328 US at 370.

And in its latest contempt decision, which involved the attempted punishment of criticism of a group of judges by the local sheriff, this Court took occasion to emphasize the doctrine that "the role that elected of-

ficials play in our society makes it all the more imperative that they be allowed freely to express themselves on matters of current public importance". *Wood vs Georgia*, 370 US 375, 395 (1962).

In holding that the State of Louisiana may evade the constitutional safeguards in this case, the Supreme Court of that State relied mainly on the reference, in this Court's opinion in *Beauharnais vs Illinois*, to "libelous utterances not being within the area of constitutionally protected speech". 343 US 250, 266 (1952). See R 139-40, 143; 154 So.2d at 414, 416-17.

It is submitted that on the basis of the historical precedents discussed herein, as well as for the reasons stated in the dissenting opinions in the *Beauharnais* case itself, the decision of that case is inconsistent with the First Amendment's guaranty of freedom of speech.[15]

---

[15] "The First Amendment repudiated seditious libel for this country. I think the First Amendment, with the Fourteenth, 'absolutely' forbids such laws without any 'ifs' or 'buts' or 'whereases.' Whatever the danger, if any, in such public discussions, it is a danger the Founders deemed outweighed by the danger incident to the stifling of thought and speech." Black, J., dissenting in *Beauharnais vs Illinois*, 343 US at 272, 275. "The First Amendment is couched in absolute terms—freedom of speech shall not be abridged . . . . There is room for regulation of the ways and means of invading privacy. No such leeway is granted the invasion of the right of free speech guaranteed by the First Amendment. . . . The Framers of the Constitution knew human nature as well as we do. They too had lived in dangerous days; they too knew the suffocating influence of orthodoxy and standardized thought. They weighed the compulsions for restrained speech and thought against the abuses of liberty. They chose liberty. . . . It is true that this is only one decision which may later be distinguished or confined to narrow limits. But it represents a philosophy at war with the First Amendment". Douglas, J., dissenting, *Ibid.*, 343 US at 285, 287.

In any event, it hardly seems arguable that by the quoted *dictum* this Court meant to turn its back on 700 years of protest and 170 years of constitutional evolution, and to open the floodgates to unrestricted sedition prosecutions in the guise of criminal-libel trials.

In fact, the *Beauharnais* opinion itself makes clear that the unprotected "libelous utterances" to which reference is made, are restricted to "epithets or personal abuse"—"utterances (which) are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality". 343 US at 256-57.

Further, and of particular consequence in the instant connection, the opinion in *Beauharnais* is careful to announce that the group criminal-libel law at issue in that case could not be applied, free of constitutional limitations, to "libels of political parties"; since "political parties, like public men, are, as it were, public property". 343 US at 263, in footnote.[16]

In like manner, when this Court later held that "obscenity is not within the area of constitutionally pro-

[16] Chafee has similarly pointed the distinction between prosecution for socially valueless abuse of private individuals, and "punishing words because they express ideas which are thought to cause a future danger to the State". *Free Speech in the United States* (1954) 149. And see Berns, *Freedom, Virtue & The First Amendment* (1957) 152: "Beauharnais was not punished for anything he said, printed or believed about the federal government, the State of Illinois, the City of Chicago, or any of their officials; the statute was not a sedition act. He was punished for what he said about other private citizens, over six hundred thousand of them."

tected speech or press", it was careful to distinguish between unprotected pornography on the one hand, and "material which does not treat sex in a manner appealing to prurient interest" on the other [*Roth vs United States*, 354 US 476, 485, 488 (1957)]; the latter type of expression falling squarely under the shelter of "the liberty to discuss publicly and truthfully *all matters of public concern* without previous restraint or fear of subsequent punishment".[17]

The suggestion that the State has an interest in the preservation of private reputations, which it is entitled to protect by criminal-libel laws, has been the subject of abstract postulation. See Note: *Constitutionality of the Law of Criminal Libel*, 52 Columbia Law Review 521, 528-33 (1952). However, no court has ever acknowledged the existence of such an interest; and it is obvious that if it were to be accorded judicial recognition, subject to protection by criminal process against criticism of public officials, that would mean the end of free speech in this country, since effective criticism is inevitably injurious to the reputation of the official involved.

The far higher constitutional interest in unfettered expression on matters within the public domain must prevail over any interest of the State in the defense of the good name of its officials.

---

[17] Quoting from *Thornhill vs Alabama*, 310 US 88, 101-102 (1940). Italics in original. The expression "matters of public concern", as there used, is apparently not employed in its literal sense, but rather to distinguish it from the "utterances (which) are no essential part of any exposition of ideas" criticized in *Beauharnais vs Illinois*, 343 US 250, 257 (1952).

This Court's opinion in the *Beauharnais* case refers to the concept of a state interest in shielding its citizens' sensibilities from defamation; but the opinion leaves no doubt that its propelling rationale was not the protection of individual reputations, but rather the real and immediate danger of civil disorder and social upheaval from unduly inflammatory and baseless appeals to racial prejudice. See 343 US at 254, 258-64.

2—*At All Events, Criticism of Judges May Not Constitutionally be Punished Without Trial by Jury, and Without Regard For the Clear-and-Present-Danger Test*

This Court has repeatedly held that statements critical of judges may not be punished through contempt-of-court procedures, if no clear and present danger to the administration of justice is posed,[18] especially if the person who published the statement is himself a public official concerned with the administration of justice. *Wood vs Georgia*, 370 US 375, 394-95 (1962). Appellant relied primarily on these decisions in support of his alternative position in this case.

The Supreme Court of Louisiana rejected the authority of this Court's decisions on the ground that appellant was charged with defamation, not contempt of court; that "Louisiana treats defamation and contempt as separate offenses"; that, accordingly, "it is un-

[18] *Craig vs Harney*, 331 US 367 (1947); *Pennekamp vs Florida*, 328 US 331 (1946); *Bridges vs California*, 314 US 252 (1941).

necessary for us to consider the issues behind the phrase 'Clear and Present Danger' "; and that "defendant's contention that LSA-RS 14:47-50 fail to provide the procedural safeguard of a trial by jury is without merit". R 143, 144; 154 So.2d at 416, 417.

In *New York Trust Co. vs Eisner*, 256 US 345, 349 (1921), Justice Holmes said that "a page of history is worth a volume of logic"; but these holdings of the Court below cannot be justified by either logic or history.

As a matter of logic, it seems evident that the constitutional protection of criticism of the official conduct of judges, which this Court has long since established in its contempt decisions, would be worthless if a State could circumvent that protection, and convict a citizen for criticism of judges, without a jury trial and without regard for the clear-and-present-danger test, simply by calling the proceeding a criminal-libel, rather than a contempt-of-court, prosecution.

The illogic of such a result is emphasized by the admitted absence from this case, of any threat to the proper disposition of pending litigation, which this Court has held to be the only plausible ground for punishment of judge-criticism even by contempt process (see *Bridges vs California*, 314 US at 271). In its opinion below, the Supreme Court of Louisiana conceded explicity that "defendant's expressions set out in the Bill of Information are not criticisms of a court

trial or of the manner in which any one of the eight judges conducted his court when in session." R 145; 154 So.2d at 417-18.

Existing statutory and judicial limitations on use of the summary contempt power to punish out-of-court criticism of a judge, are based, at least in part, on the concept that the threat of summary trial, conviction and punishment by the judge for such criticism, constitutes a form of prior restraint on freedom of speech, and cannot be reconciled with the prohibitory standards established by the First Amendment. *Cf.* Nelles and King, *Contempt by Publication in the United States*, 28 Columbia Law Review 401, 402, 526-27 (1928).

This threat can be avoided only by permitting such trial—whether in terms for contempt or for defamation—only by a jury, and by permitting conviction only subject to the clear-and-present-danger test.

History affords no better basis than logic for distinguishing between punishment of judge-criticism by contempt and by criminal-libel prosecution, or for denying, in the latter, the constitutional safeguards which protect the former. Not only have contempt and criminal-libel processes evolved concurrently as governmental devices for the suppression of publicly critical speech,[19] but, as demonstrated under Point 1

[19] "Contempt by publication often comes very close to seditious libel. In fact, seditious libel at common law included publications calculated to excite disaffection towards the administration of justice." Nelles and King, *Contempt by Publication in the United States*, 28 Columbia Law Review 401, 406 (1928). See footnote 13 above, and accompanying text.

of this *Argument* above, criminal-libel statutes are actually the older, and more common resort, of these twin enemies of the citizen's right to complain of official misconduct.

Prosecution of both contempts of court and political libels, along with censorship, were all entrusted to the Court of Star Chamber during its régime. Hudon, *Freedom of Speech and Press in America* (1963) 9-10; Fox, *The King v. Almon*, 24 Law Quarterly Review 266 (1908).

Just as the original design of the statute *De Scandalis Magnatum* was to punish "political scandal" (see page 13 above), so the original purpose of the contempt power was likewise "to keep a blaze of Glory around (courts and judges), and to deter people from attempting to render them contemptible in the eyes of the public."[20]

Indeed, both this ground and the later rationalization that punishment for contempt is necessary to preserve the due administration of justice, are still advanced to this day as justifications for contempt actions. As late as 1941, this Court had occasion to state in a contempt case, that "the substantive evil here sought to be averted has been variously described below. It appears to be double: disrespect for the judiciary; and

[20] Wilmot, *Notes of Opinions and Judgments* (1802) 270. Undelivered Judgment in *The King vs Almon*, 97 ER 94 (1765). The influence of this undelivered opinion on the development of the law of contempt is traced by Sir John Fox in his *History of Contempt of Court* (1927), Chapter II.

disorderly and unfair administration of justice." *Bridges vs California*, 314 US 252, 270.

A parallel evolution also took place in the criminal-libel and contempt areas as to the right to trial by jury. Contempts by utterance had originally been triable by jury in the common-law courts; but when contempt prosecutions returned to those courts on demise of the Star Chamber, the latter's summary non-jury process was carried over into the common-law contempt procedure. Fox, *The King v. Almon*, 24 Law Quarterly Review 266, 268-70 (1908).

In light of these historical developments, Nelles and King, in their leading discussion on *Contempt by Publication in the United States*, 28 Columbia Law Review 401, 406 (1928), rightly concluded that "insofar as a popular reaction which for 118 years made Sedition Acts unthinkable may be assimilated to adjudication of their unconstitutionality, it may seem also to have established the unconstitutionality of punishing libels of courts as contempts"—a proposition endorsed by this Court (subject to the clear-and-present-danger test) thirteen years later, in *Bridges vs California*, 314 US 252.

While the decisions rendered thus far by this Court have concededly not embraced the full scope of the submission under Point 1 of this *Argument*, two principles have been established with clarity in this field.

The first is that, "although jury trial in criminal libel cases may not be guaranteed by the Sixth Amendment

as reflected in the Fourteenth", it must be placed among the constitutional protections of free speech "ensured by the embodiment of the First Amendment in the Fourteenth". Since criminal-libel prosecutions are now used chiefly "by the authorities as a form of reprisal against those who criticize misconduct in office", "to deprive the jury of its traditional power in criminal libel trials is . . . dangerous. Freedom of expression, protected today by the First and Fourteenth Amendments, requires retention of the eighteenth century rule that no one shall be punished for publishing a libel without having had the opportunity to convince a jury that the matter published was not libelous."[21]

And, by common consent, the constitutional protections to be afforded persons who are prosecuted for political criticism, also include the great substantive safeguard of the clear-and-present-danger test.[22]

---

[21] Note: *Constitutionality of the Law of Criminal Libel*, 52 Columbia Law Review 521, 532-33 (1952). "There is convincing evidence that at the end of the eighteenth century freedom of discussion was thought to demand jury trial in criminal libel cases. Included in this evidence is the passage in England of Fox's Libel Act of 1792, the influence upon colonial feeling of the jury's action in acquitting Zenger in 1735, and the provision made for jury determination of issues of law and fact in early state constitutions as well as the Sedition Act of 1798." *Ibid.* Accord: 2 *Cooley's Constitutional Limitations* (8th ed., 1927) 885; Deutsch, *Freedom of the Press and of the Mails*, 36 Michigan Law Review 703, 711 (1938). Also to be noted is the federal statute requiring jury trials in prosecutions for contempt of court by publication, given effect in *Nye vs United States*, 313 US 33 (1941). This Court again emphasized the jury question in reversing a contempt conviction in *Craig vs Harney*, 331 US 367, 373 (1947).

[22] Kelly, *Criminal Libel and Free Speech*, 6 Kansas Law Review 295, 321-25 (1958). "By applying this stringent rule since late in the 1930s, the Supreme Court has struck down each challenged interference wherever the legislation was specifically directed against the content of the utterance. This has

Sir James Stephen submitted, eighty years ago, that "every member of the public who censures the ruler for the time being, exercises in his own person the right which belongs to the whole of which he forms part. He is finding fault with a servant. To those who hold this view fully, and carry it out to all its consequences, there can be no such offense as sedition. There may indeed be breaches of the peace which may destroy or endanger life, limb or property, and there may be incitements to such offenses. But no imaginable censure of government, short of a censure which has an immediate tendency to produce such a breach of the peace, ought to be regarded as criminal."[23]

If this has been the constitutional law of England for more than eighty years, it would be anomalous to a degree, particularly in light of the long struggle against criminal prosecutions for political libel which culminated in the adoption of the First Amendment itself, if a State could convict and punish a citizen for criticizing public officials, without trial by jury and without regard for the clear-and-present-danger rule, merely by labeling its prosecution "Criminal Libel" instead of "Contempt of Court" or "Sedition".[24]

---

been true in legislation involving either prior restraint or subsequent punishment." Note: *Clear and Present Danger Re-examined*, 51 Columbia Law Review 98, 99-100 (1951).

[23] 2 *History of the Criminal Law of England* (1883) 299-300. Holdsworth affirms that this "is now the accepted view" in England. 8 *History of English Law* (1925) 337.

[24] "No purpose in ratifying the Bill of Rights was clearer than that of securing for the people of the United States much greater freedom of religion, expression, assembly and petition than the people of Great Britain had ever enjoyed." *Bridges vs California*, 314 US 252, 265 (1941). To the same effect: *Grosjean vs American Press Co.*, 297 US 233, 248-49 (1936). "The great initial problem in this realm of consti-

This Court has applied the clear-and-present-danger rule in testing the constitutionality of convictions for offensive speech under anti-picketing statutes,[25] as it has under federal laws designed to preserve the security of the Republic itself.[26]

And of particular significance, this Court has twice reversed convictions for breach of the peace, on the ground that the asserted breach was an exercise of free speech, protected by the Fourteenth and First Amendments in the absence of any clear and present danger of resultant disorder.

In *Cantwell vs Connecticut*, this Court reversed such a conviction on a common-law count, and declared it obvious "that a State may not unduly suppress free communication of views, religious or other, under the guise of conserving desirable conditions"; and went on to hold that "in the absence of a statute narrowly drawn to define and punish specific conduct as constituting a clear and present danger to a substantial interest of the State, the petitioner's communication, considered in the light of the constitutional guarantees, raised no such clear and present menace to public peace and order as to render him liable to conviction of

---

tutional liberty was to get rid of the common law of 'seditious libel' which operated to put persons in authority beyond the reach of public criticism." Corwin, *Liberty Against Government* (1948) 157. See Madison, *Report on the Virginia Resolutions*, 4 *Elliott's Debates* (1836) 572. 596-99, and text following note 8 *supra*.

[25] *Thornhill vs Alabama*, 310 US 88, 104-105 (1940).

[26] *Schenck vs United States*, 249 US 47, 52 (1919); *Hartzel vs United States*, 322 US 680, 687 (1944).

the common law offense in question." 310 US 296, 308, 311 (1940). To the same effect, *State vs. Klapprott*, 127 NJL 395, 22 A2d 877 (1941).

Presented, ten years later, with a conviction for statutory breach of the peace by communication of ideas, this Court again reversed, on the ground that "freedom of speech, though not absolute . . . is nevertheless protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance or unrest". *Terminiello vs Chicago*, 337 US 1, 4 (1949).

Given these precedents, anomaly would be compounded if a state were entitled to by-pass the First-Amendment bulwarks, in placing a public official on trial for criticizing other public officials, simply by laying its charge under its ordinary criminal-defamation statute.

The Supreme Court of Louisiana emphasized in its opinion in this case, this Court's refusal to apply the clear-and-present-danger rule in the group-libel case of *Beauharnais vs Illinois*. But, as demonstrated under Point 1 of this *Argument*, *Beauharnais*, to the extent that it may retain authority at all, has no precedential force in a case involving criticism of the official conduct of officers of government.

3—*Statutory Provision For the Defense of Truth Without Malice Does Not Render Constitutional the Application of the Louisiana Defamation Statute in This Case*[27]

Appellant's conviction for defamation of public officials in a statement on a matter of significant public interest, cannot be upheld by reference to the provision of Louisiana's defamation law, making truth without malice a defense to a charge of violation thereof. RS 14:48, quoted on page 3 above. This defense is not a valid alternative to the constitutional right of free speech, nor even to the shelter afforded by the clear-and-present-danger rule.

In the first place, all thoughtful writers agree that this traditional defense is rendered illusory by tying its availability to the presence of good motives or the absence of malice: "To make good motives for justifiable ends the test of the lawfulness of truth published on a matter of public concern is to cut off allowable argument and debate, and to deprive the public of the educational benefit of the publication. In addition to this legal reason, there is the practical reason of the great danger, illustrated by the prosecutions under the federal Sedition Act, that men will be fined and imprisoned, under the guise of being punished

[27] The question whether provision for the defense of truth with good motives is a constitutionally legitimate substitute for the clear-and-present-danger test was not raised or decided in the *Beauharnais* case. The clear-and-present-danger question was not reached at all (343 US at 266), and the only question presented or discussed as to the defense of truth, was whether the appellant had satisfied the statutory requirements for invoking the defense (343 US at 265-66).

for their bad motives, or bad intent and ends, simply because the powers that be do not agree with their opinions." 2 Schofield, *Essays on Constitutional Law and Equity* (1921) 540.[28]

It seems equally clear, in the second place, that the defense of truth would be just as illusory, even if the absence of malice were not a condition of the defense. "Truth", although a theoretical absolute, is, in realistic perspective, simply too subjective, too relative a concept to satisfy the constitutional requirements, especially in the shadowy zone of mingled fact and opinion within which criticism of public officials invariably falls.

The constitutional protection of free speech would be of little value, if it extended only to statements of fact which are subject to positive demonstration by proof acceptable in a court of law, and if it extended only to expressions of ideas and opinions which majority sentiment, in the person of a judge (or even in the persons of jurors), is already prepared to accept. No constitutional protection is necessary for statements which fall in these categories.

---

[28] "Any criticism disliked by a court can too easily be labeled 'for bad motives' and punished in spite of the defense of truth. This was the case in the *Beauharnais* decision." Kelly, *Criminal Libel and Free Speech*, 6 Kansas Law Review 295, 328 (1958). "Nothing can be more difficult than to pronounce with certainty upon the sincerity of the man who may have misstated the transactions of Government. How can it be ascertained what portion of actual Malevolence and how much of mistaken Zeal, existed within his mind?" Wortman, *Political Enquiry and the Liberty of the Press* (1800) 172-3. Accord: Madison, *Report on the Virginia Resolutions*, 4 *Elliott's Debates* (1836) 572, 602; 2 *Cooley's Constitutional Limitations* (8th ed., 1927) 900.

The First Amendment is not needed, and was not designed, to protect such innocuous utterances; its purpose is to foster the expression of provocative criticism, and the propagation of contentious ideas—speech so dissentient as to require the shield of a constitution against punishment as heresy—whether or not the speaker can satisfy a judge that what he says is demonstrably "true".

To limit the free-speech guarantees to what the majority considers right, would be to hobble, not to aid, the search for truth, and thereby to defeat the whole beneficent purpose of the first article of the Bill of Rights.

Rejecting the Sedition Act's defense of truth, Madison wrote: "But, whatever may have been the meritorious intentions of all or any who contributed to the Sedition Act, a very few reflections will prove that its baneful tendency is little diminished by the privilege of giving in evidence the truth of the matter contained in political writings. In the first place, when simple and naked facts alone are in question, there is sufficient difficulty in some cases, and sufficient trouble and vexation in all, of meeting a prosecution from the Government with the full and formal proof necessary in a court of law.

"But in the next place, it must be obvious to the plainest minds, that opinions and inferences, and conjectural observations, are not only in many cases inseparable from the facts, but may often be more the objects of the prosecution than the facts themselves: . . .

and that opinion, and inferences, and conjectural observations, cannot be subjects of that kind of proof which appertains to facts, before a court of law." *Report on the Virginia Resolutions*, 4 *Elliott's Debates* (1836) 572, 602. Accord: Hortensius (George Hay), *An Essay on the Liberty of the Press* (1799) 43-49.[39]

In practice, the Sedition Act's defense of truth proved even more delusive than Madison had predicted. To the already formidable burden of proof under common-law rules of admissible evidence, unsympathetic judges

[39] "The mere right to show truth as a complete defense is, however, inadequate to preserve freedom of expression in the area of public comment. Because discussion of subjects of public interest commonly involves issues on which there is contradictory evidence and belief, the defense of truth is often extremely difficult to establish. The First Amendment, one of whose primary functions is to ensure opportunities for the democratic determination of public matters, seems therefore to demand that, with respect to the discussion of such matters, reasonable belief in the truth of what is published be made a complete defense. Finally, even the defense of reasonable belief is not always a sufficient safeguard of society's interest in this area. Since much of the comment on individual activities of public import is no more than an assertion of the publisher's opinion as to the moral overtones of underlying facts, the defense of reasonable belief in the truth of what is published is often inappropriate. Here the civil libel standard of 'fair comment', allowing a high degree of freedom of expression, might well be applied." Note: *Constitutionality of the Law of Criminal Libel*, 52 Columbia Law Review 521, 532 (1952). "In cases of this kind, it is submitted that the essential point is not the admission of truth as a defense but a consideration of whether the matter is public utterance, and if so, whether it presents a clear and present danger of a breach of the peace." Kelly, *Criminal Libel and Free Speech*, 6 Kansas Law Review 295, 332 (1958). "The prior balancing in favor of protecting expression, embodied in the first amendment, here compels acceptance of the legal doctrine that criminal libel laws are invalid. And this conclusion would stand whether truth is accepted as a complete defense or the standard remains in its present form." Emerson, *Toward A General Theory of the First Amendment*, 72 Yale Law Journal 877, 924 (1963).

added the further burden of proving the truth "to the marrow", and even of proving the complete truth by the testimony of a single witness. See Hudon, *Freedom of Speech and Press in America* (1963) 53. This nation's prompt and vigorous repudiation of the Sedition Act, was a direct repudiation of the shibboleth that the defense of truth is an adequate safeguard of the right to speak out against official misconduct.

This Court has recognized, in its contempt decisions, that error is properly combatted, not by suppressing speech and incarcerating the speaker, but by "counter-argument and education". *Wood vs Georgia*, 370 US 375, 389 (1962).[30] Freedom of speech requires application of this principle in criminal-libel prosecutions as well.

Conclusion

Louisiana's criminal defamation statute is invalid as a denial of free speech under the First Amendment as embodied in the Fourteenth, especially when made the basis of a prosecution for seditious libel.

There is, in any event, no pretense that appellant's utterances posed any clear and present danger to any interest which the State of Louisiana is entitled to protect by criminal process at the expense of freedom of speech.

[30] "Comment on what a judge has done—criticism of the judicial process in a particular case after it has exhausted itself—no matter how ill-informed or irresponsible or misrepresentative, is part of the precious right of the free play of opinion. Whatever violence there may be to truth in such utterances must be left to the correction of truth." Frankfurter, J., dissenting, in *Craig vs Harney*, 331 US 367, 389 (1947).

The Supreme Court of Louisiana recognized expressly that appellant's statement—which could scarcely be considered more derogatory than those involved in this Court's *Pennekamp* and *Wood* decisions—presented no threat to the administration of justice; and there was obviously no clear and present danger of resort by the Judges to violent conduct to avenge appellant's affront to their dignity.

Even if prosecution for criminal defamation of judges were constitutionally permissible, and there was a question as to whether appellant's utterance posed a clear and present danger of bringing about a substantive evil which the State of Louisiana had a right to prevent, Louisiana's constitutional and statutory provisions under which appellant's request for trial by jury was denied, are invalid under the due-process clause of the Fourteenth Amendment embodying the First.

It is respectfully submitted that the attempted application of Louisiana's defamation statute in this case violated the First and Fourteenth Amendments to the Constitution, and that the judgment appealed from should be reversed.

Eberhard P. Deutsch,
Attorney for Appellant.

Deutsch, Kerrigan & Stiles,
René H. Himel, Jr.,
Louis P. Trent,
Of Counsel.

February, 1964.

Office-Supreme Court, U.S.
FILED.
MAR 9 1964
JOHN F. DAVIS, CLERK

No. [redacted] 4

In the Supreme Court of the United States

OCTOBER TERM, 1964

JIM GARRISON,

Appellant,

v.

STATE OF LOUISIANA,

Appellee.

On Application for Appeal from the Supreme Court of Louisiana or Alternatively Writ of Certiorari to the Supreme Court of Louisiana

BRIEF ON BEHALF OF STATE OF LOUISIANA, APPELLEE

JACK P. F. GREMILLION,
Attorney General,
State of Louisiana,
2201 State Capitol,
Baton Rouge, Louisiana.

M. E. CULLIGAN,
Assistant Attorney General,
State of Louisiana,
104 Supreme Court Bldg.,
301 Loyola Avenue,
New Orleans, Louisiana.

JOHN E. JACKSON, JR.,
Assistant Attorney General,
State of Louisiana,
104 Supreme Court Bldg.,
301 Loyola Avenue,
New Orleans, Louisiana.

INDEX

	PAGE
Statutes Involved	1
Questions Presented	4
Statement of Case	5
Argument	10
Conclusion	47

AUTHORITIES CITED

U. S. CONSTITUTION

1st Amendment	32, 42
6th Amendment	38
14th Amendment	42

U. S. STATUTES

Sedition Law, Act of July 14, 1798, 1 Stat. 596	10

CONSTITUTION OF LOUISIANA 1921

Article 1, Sec. 3	2, 42
Article 7, Sec. 41	1, 39
Article 7, Sec. 56	7

STATUTES OF LOUISIANA

Revised Statutes of La. of 1950

Title 14, Sections 47-50	2-3, 10,
Title 15, Section 340	39
Title 15, Section 341	10
Title 13, Section 4611	24

PAGE

LA. CODE OF CIVIL PROCEDURE
Article 221-227 ..... 11, 24

LA. CODE OF CRIMINAL PROCEDURE
(R.S. 15) Section 11 & 12 24

ENCYCLOPEDIAS

Am. Law Reports Vol. 22, P. 1504 40

Am. Juris. Vol. 31, Section 8-10,
PP. 14-17 ..... 40, 41

47 Am. Juris P. 610 15

Am. Jurisprudence, Verbo Constitutional
Law, Sec. 328 20

46 Corpus Juris Secundum PP. 1085-1088 15

47 Corpus Juris Secundum PP. 1093-1094 15

Ruling Case Law, Vol. 16, Section 19,
P. 200 40

Ruling Case Law, Vol. 16, Supplement,
Section 19, P. 4060 40

TEXT BOOKS

Burdick, The Law of Crime Vol. 3, Sec.
786, P. 152 33

Burdick, The Law of Crime Vol. 3, Sec.
786, PP. 151, 152 19

Chafee, Free Speech in U.S. (1954)
P. 497 15

Complete Works of Edward Livingston,
Vol. 1, P. 292 19

Complete Works of Edward Livingston,
Vol. 1, PP. 293, 294, 295, 296 22

PAGE

Cooley's Constitutional Limitations (8th Ed) Vol. 2, PP. 920-922 18

Cooley, Constitutional Limitations (8th Ed) Vol. 2, P. 900-922 16

Cooley Constitutional Limitation (8th Ed) Vol. 2, PP. 883-884, 886, 938-939 20

Dean, Hatred, Ridicule or Contempt (1954) P. 10-14 ..... 20, 26

Le Buffe and Hayes, The American Philosophy of Law (4th Ed., 1947, Crusades Press) PP. 234-238 ..... 20; 34

Le Buffe and Hayes, The American Philosophy of Lerner, The mind and faith of Justice Holmes (1954) P. 290 Law (4th Ed 1947) PP. 234-238 36

Marrs Criminal Jurisprudence of Louisiana (2d Ed) Vol. 1, PP. 197-198 20

Marr's Criminal Jurisprudence of Louisiana (2d Ed) P. 197 22

Marr's Criminal Jurisprudence of Louisiana PP. 215-216 18

Wharton Criminal Law, Section 878, P. 741 19

Wormser, The Law (1949) PP. 327-328 26

Wormser, The Law (1949) P. 16 22

LAW REVIEW

52 Columbia Law Review, 521, 532 27

51 Columbia Law Review, 98, 99 36

PAGE

35 Cornell Law Quarterly, PP. 261, 273, 283, n. 67 20

29 Harvard Law R., 640, 651-653 36

6 Kansas Law R., 295, 325 36

61 Michigan L. Review, 318 26

61 Michigan L. Rev., 283, 295-298, 303, 350 26

30 Yale Law Journal, 48, 51 17

72 Yale Law Journal, 877, 912 37

JURISPRUDENCE

Arizona Public Company v. Harris, 20 Arizona 446, 181 P. 373 ..... 14, 16

American Communications Assn. v. Douds, 339 U.S. 382 ..... 34, 37

Bantam Books Inc. v. Sullivan, 83 S.Ct. 631 20

Baxely v. U.S., 134 F. 2d 937 13

Beauharnais v. People of Illinois, 343 U.S. 250 ..... 19, 43, 46

Bessette v. W. B. Conkey Company, 194 U.S. 324 26

Breard v. Alexandria, 341 U.S. 622 43

Bridges v. California, 314 U.S. 252 ..... 25, 29, 31

Cadro v. Plaquemine Gazette, 11 So. 2d 10 18

Cantwell et al v. Connecticut, 310 U.S. 296 309-210 ..... 30, 32, 46

PAGE

Chaplinsky v. New Hampshire, 315 U.S. 568 ..... 19, 36, 43, 44

Chappell Chemical and Fertilizer Co. (3) v. Sulphur Mines, 172 U.S. 474 41

Craig v. Harnay, Sheriff 331 U.S. 367 .... 31, 41

De Jonge v. Oregon, 299 U.S. 353 34

Dennis v. United States, 341 U.S. 494 .... 32, 37

Deshotel v. Thistlewaite, 240 La. 12, 121 So. 2d 222 18

Dorr v. U.S., 195 U.S. 138 ..... 42, 46

Ex Parte Hudgings, Petitioner 249 U.S. 378... 25

Farmers Education and Co-op Union of America, North Dakota Division, v. W. Day, Inc., 360 U.S. 525 46

Gandia v. Pettingill, 222 U.S. 452 46

Gitlow v. People of New York, 268 U.S. 652 ..... 30, 32, 43

Hawkins v. Bleakly, Auditor of the State of Iowa, et al 243 U.S. 210 41

Herndon v. Lowry, 301 U.S. 242, 261-264 30

Jurney v. Mac Cracken, 249 U.S. 125 ..... 29, 52

Kennedy v. Item, 213 La. 347, 34 So. 2d 886... 18

Madison v. Bolton, 234 La. 997, 102 So 2d 433 18

Martin v. Markley, 202 La. 291, 11 So. 2d 593 18

PAGE

Meyers v. U.S., 264 U.S. 95 25

Miller v. Capital City Press, 142 So. 2d 462.... 18

Naihaus v. La. Weekly Pub. Co., 176 La. 240, 145 So. 527 18

Near v. Minnesota, 283 U.S. 697 ..... 12, 34, 47

New York Central Railroad v. White, 243 U.S. 188 41

Nye v. U.S., 313 U.S. 33 40

Patterson v. Colorado, 205 U.S. 454 12

Pennekemp v. Florida, 328 U.S. 331 25

People v. Edmondson, 4 N.Y. S. 2d 57, 168 Misc. 142 15

People v. Feiner, 300 N.Y. 391 12

Philadelphia v. Quigley, 62 U.S. 202 46

Republica v. Oswald, 1 U.S. 319 ..... 19, 43

Roth v. U.S., 354 U.S. 476 43

Schenck v. U.S., 249 U.S. 47 ..... 12, 34

Shively v. Garage Employees Local Union No. 44, 108 P. 2d 354 13

Southern Railway Co. v. Durham, 266 U.S. 178 41

State v. Aspelin, 118 Wash. 331, 203 P. 964 .. 15

State v. Bienvenu, 36 La. Ann. 378 33

State v. Boyd, 86 N. J. L. 75 12

State v. Lambert, 188 La. 968, 178 So. 508 ... 33

PAGE

State v. O'Donnell, 141 La. 886, 75 So 811 18

State ex inf. Crow v. Shephen, 177 Mo. 205, 76 S.W. 79 15

State of Louisiana v. Warren J. Moity, 159 So. 2d 149 11

State of Louisiana v. Webster, 159 So. 2d 140 27

State v. Van Wye, 136 Mo. 227 12

Synder v. Massachusetts, 291 U.S. 97 41

Times Film Corp v. City of Chicago, 139 F. Supp. 837 12

Tumey v. Ohio, 273 U.S. 510 42

White v. Nicholls, 44 U.S. 266 46

Wood v. Georgia, 370 U.S. 375 25

No. 400

In the Supreme Court of the United States

OCTOBER TERM, 1963

JIM GARRISON,

Appellant,

v.

STATE OF LOUISIANA,

Appellee.

On Application for Appeal from the Supreme Court of Louisiana or Alternatively Writ of Certiorari to the Supreme Court of Louisiana

BRIEF ON BEHALF OF STATE OF LOUISIANA, APPELLEE

May it Please the Court:

STATUTES INVOLVED

1. Constitution of Louisiana, Article 7, Section 41

"All (criminal) cases in which the punishment may not be at hard labor shall, until otherwise provided by law, be tried by the judge without a jury."

* * * * * * * *

2. Louisiana Revised Statutes Title 14, Sections 340 and 341

"Every misdemeanor shall be triable by the judge without the intervention of a jury."

"A misdemeanor is defined to be an offense, the punishment of which is necessarily a fine or imprisonment in the parish jail or both."

3. Constitution of Louisiana, Article 1, Section 3

"No law shall ever be passed to curtail or restrain the liberty of speech or of the press; any person may speak, write and publish his sentiments on all subjects, being responsible for the abuse of that liberty."

4. Louisiana Revised Statutes of 1950, Title 14 (Criminal Code).

"§47. Defamation

"Defamation is the malicious publication or expression in any manner, to anyone other than the party defamed, of anything which tends:

(1) To expose any person to hatred, contempt, or ridicule, or to deprive him of the benefit of public confidence or social intercourse; or

(2) To expose the memory of one deceased to hatred, contempt, or ridicule; or

(3) To injure any person, corporation, or association of persons in his or their business or occupation.

"Whoever commits the crime of defamation shall be fined not more than three thousand dollars, or imprisoned for not more than one year, or both."

* * *

"§48. Presumption of malice

"Where a non-privileged defamatory publication or expression is false it is presumed to be mali-

cious unless a justifiable motive for making it is shown.

"Where such a publication or expression is true, actual malice must be proved in order to convict the offender."

"§49. Qualified privilege

"A qualified privilege exists and actual malice must be proved, regardless of whether the publication is true or false, in the following situations:

(1) Where the publication or expression is a fair and true report of any judicial, legislative, or other public or official proceeding, or of any statement, speech, argument, or debate in the course of the same.

(2) Where the publication or expression is a comment made in the reasonable belief of its truth, upon,

(a) The conduct of a person in respect to public affairs; or

(b) A thing which the proprietor thereof offers or explains to the public.

(3) Where the publication or expression is made to a person interested in the communication, by one who is also interested or who stands in such a relation to the former as to afford a reasonable ground for supposing his motive innocent.

(4) Where the publication or expression is made by an attorney or party in a judicial proceeding."

* * *

"§50. Absolute privilege

"There shall be no prosecution for defamation in the following situations:

(1) When a statement is made by a legislator or judge in the course of his official duties.

(2) When a statement is made by a witness in a judicial proceeding, or in any other legal proceeding where testimony may be required by law, and such statement is reasonably believed by the witness to be relevant to the matter in controversy.

(3) Against the owner, licensee or operator of a visual or sound broadcasting station or network of stations or the agents or employees thereof, when a statement is made or uttered over such station or network of stations by one other than such owner, licensee, operator, agents or employees. As amended Acts 1950, No. 469, §1."

QUESTIONS PRESENTED

1. There is no federal question involved for the reason that the Louisiana Supreme Court did not hold that the Louisiana Defamation Statute was applied as a sedition act for criticism of public officials.

2. There is no federal question involved as to clear and present danger, as the Defendant was charged not with contempt of court, but with the crime of defamation.

3. There is no federal question involved as the right to a jury trial in a state prosecution is not a fundamental of due process under the First or Fourteenth Amendments or any other provision of the Federal Constitution.

4. There is no federal question involved because the United States Supreme Court has previously determined that a criminal prosecution by a state under a defamation statute does not violate the First or Fourteenth Amendments.

STATEMENT OF THE CASE

This is an appeal from the final judgment of the Louisiana Supreme Court, upholding the conviction of appellant of the crime of Defamation.

Following his induction into office as District Attorney of Orleans Parish, in May 1962, appellant embarked upon a career of public speaking (R 246-249, 250-260, 261, 267, 274-275) and the spending of public funds (R 315-318, 327, 351-352, 354, 357, 359, 365-368, 377, 384-385, 408, 478, 512-516.)

The Judges of the Criminal District Court for the Parish of Orleans, who were responsible for approving the expenditures of appellant from the fines and forfeitures fund (R.S. 15:571.11) became alarmed at the open-handedness of appellant in disbursing the funds. (R 350-351, 365-368, 384, 476, 510-516, 530, 616.)

Their apprehension was well founded, for it was appellant's attitude that the fund was his to spend in any way he saw fit and that it was his duty to spend it as fast as possible (R 255, 624.)

Appellant's alleged falsehood to one judge concerning the approval by another judge of one of his expenditures brought matters to a head, culminating

in a rule adopted by the judges en banc that all expenditures from the fund were to be approved by five of the eight judges. (R 350, 354-355, 418-419, 424-425, 511.)

Filled with venom at being frustrated by the Criminal Court judges, and spewing hatred like an avenging Fury, appellant, on November 2, 1962, struck back against a retired judge (R 307) with a statement defaming the eight incumbent judges as individuals and gave this statement to a New Orleans newspaper with net sales on that day of 74,608. (R 196-198, 209, 210-215, 229, 266.)

This defamatory statement is the subject of the present appeal and appears in full in R 27-32.

Not satisfied with the hatred, ridicule and contempt engendered by his charge, among others, of "racketeer-influence" in the latter statement, and the wide publicity it had received, appellant continued to castigate the judges as individuals (R 256, 259, 236-238, 247-249) referring to them publicly as "sacred cows" (R 277), and "a band of armed robbers" (R 259), among other epithets (R 612.)

On November 8, 1962 the eight Criminal District Court Judges for the Parish of Orleans, as individuals, filed an affidavit against Jim Garrison, the appellant herein, charging him with defamation in violation of La. R.S. 14:47. R 22. Immediately thereafter, *appellant, through Frank J. Klein, appellant's 1st Assistant District Attorney, dismissed the charge*, R 22, whereupon the eight Criminal District Court

Judges for the Parish of Orleans, State of Louisiana, petitioned the Attorney General under authority granted by the State Constitution (Article 7, Section 56) to file a bill of information charging appellant Jim Garrison with defamation in violation of La. R.S. 14:47, the appellant being a party at interest, namely the accused. R 22-24.

Accordingly, Jim Garrison, appellant, was charged with the crime of defamation on November 15, 1962 in the Criminal District Court for the Parish of Orleans in violation of Louisiana Revised Statutes 14:47. The Bill of Information charging the defendant with the offense of Defamation is contained in R 26-32.

On November 13, 1962, the Supreme Court of the State of Louisiana (on the petition of the State) appointed Honorable William H. Ponder, Judge of the Eleventh Judicial District Court, to sit as Judge ad hoc for Section "C" of the Criminal District Court for the Parish of Orleans for the trial of the instant cause, No. 177-418 of the Docket of the Criminal District Court for the Parish of Orleans, entitled "State of Louisiana versus Jim Garrison". (LSA-R.S. 15:307) R 25. The Order was effective immediately. All of the judges of the Criminal District Court for the Parish of Orleans, including the presiding Judge of Section "C", to which Section this case had been allotted, recused themselves, and Judge-ad-hoc Ponder proceeded with trial of the cause. R 1.

Prior to trial on the merits, appellant filed Mo-

tions to Recuse Judge-ad-hoc Ponder R 33, a Demurrer, and a Motion to Quash, R 36, and an Application for a Bill of Particulars, R 34, on December 4, 1962. On December 5, 1962, appellant filed a Motion for Trial By Jury, R 38. All four Motions were overruled by the court, R 4, and the State then filed an Answer to appellant's Application for a Bill of Particulars, R 40. The State also filed a Motion to Recuse District Attorney Garrison, he being a party at interest, R 26, which Motion was sustained by the trial court. Appellant was represented in the state courts in proper person, R 1, and by attorneys Donald V. Organ and Louis P. Trent, R 4.

Thereafter, appellant was tried and on February 6, 1963, the court rendered its judgment of "Guilty as Charged." R 14.

A review of the testimony adduced at the trial is found in the trial court's opinion of February 6, 1963 (R 610-625.) The court found as facts that the statement was defamatory (R 627), that it was false in its essential particulars (R 627), that appellant could not have had a reasonable belief as to its truth (R 632), and that appellant was motivated by actual malice (R 631, 633).

Appellant moved for a new trial and filed a motion in arrest of judgment, both of which were overruled. (R 16, 57, 58, 635-636). Appellant was sentenced to pay a fine of $1,000, or to four months imprisonment in the Parish Prison (R 637-640).

On appeal, the Louisiana Supreme Court affirmed

defendant's conviction and sentence (R 118-173).

Appellant, in his statement of the case, has set forth certain facts which are misleading. Particular reference is made to footnote number 1, on page 6 of appellant's brief, which contains a partial statement of the reasons given by the trial judge concerning the motivating influence of the judges in adopting a policy of meeting en banc to approve disbursement of the fines and forfeiture funds.

The Court is referred to the following statement of the trial judge:

> "I gather from the evidence that this action was based on the belief that the Defendant was being extravagant in the expenditure of funds, spending them excessively without supporting vouchers and affidavits or bills or showing of the necessity thereof. Also, it was brought about by reason of the fact that some of the judges thought the District Attorney might have been playing one judge against the other to get the bills approved." R 630.

Further, the appellant has made the statement that the utterances of the Defendant, which were the basis for the prosecution, related solely to the judges' official conduct. The appellant also states that at no point did the Defendant's utterances refer to the private conduct of any of the judges. (See page 9 of Appellant's brief). This is a false assumption as the appellant remarks were not a comment on the judges' official conduct, but were a false statement constituting pure personal abuse.

The Appellant in his statement of the case states that the trial judge, although "holding that 'the defamatory statement might not have been issued without some provocation', found the appellant guilty" and sentenced him to a fine of $1000 or four months. This is an attempt on the part of the appellant to confuse the Court as this was *not* a part of the Judge's reasons for his decision, but rather was a mitigating circumstance which was considered by the judge *for the purpose of imposing sentence.* (R 688)

ARGUMENT

In our opinion, the appellant has made a definite effort to confuse the Court by implying that there is no distinction in law between the offense of contempt of court, the crime of defamation, and sedition, as known in the common law, or the Sedition Act of July 14, 1798, 1 statute at large 596. (See appendix A). The distinction is clear as contempt of court is an offense against a Court and the administration of justice, defamation as defined by Louisiana Law is a crime which tends to breach the peace, and sedition is a crime against organized government.

The legislature of Louisiana has clearly evidenced this difference by placing the defamation statute in one section of its Revised Statutes, and placing the offenses against organized government, such as, anarchy, treason, and the anti-communist act in entirely different sections of the Revised Statutes (Louisiana R.S. of 1950, Title 14 (Criminal Code) Sections 47-50 and Sections 119-et seq; Sections 358-et seq). The of-

fense of contempt of court is either of a summary nature or a contempt committed out of the presence of the Court, and is contained in Articles 221-227 of the Louisiana Code of Civil Procedure and is subdivided therein as direct contempt and constructive contempt, constructive contempt being any contempt of court other than contempt of court committed in the present of the Court. (See Appendix B.)

The other attempt appellant has made to confuse the issue is his deliberate failure to distinguish between the guarantee of freedom of speech and the press in the First Amendment of the U.S. Constitution to insure that previous restraints upon the publication of beliefs, whether spoken or written, would be prohibited and the appellant's responsibility for the publication of scandalous and libelous statements.

Prior to taking up the points of law involved herein appellee would like to quote from a recent decision of the Louisiana Supreme Court, entitled *State of Louisiana v. Warren J. Moity*, ___ Louisiana ___, 159 So. 2d 149:

> "However, these prohibitions against invasion by the states as set forth in the decisions of the highest court of our country are not so all-inclusive they cover with a protecting blanket any and all statements made or published by individuals or organizations. In the early and celebrated case of *People v. Croswell*, decided in 1804, where the defendant was accused of defaming the then President of the United States, Thomas Jefferson, it was pointed out that "The founders of our

governments were too wise and too just ever to have intended, by the freedom of the press, a right to circulate falsehood as well as truth, or that the press should be the lawful vehicle of malicious defamation, or an engine for evil and designing men to cherish, for mischievous purposes, sedition, irreligion, and impurity. Such as abuse of the press would be incompatible with the existence and good order of civil society." 3 Johnson's cases, at page 337.

"The decisions of the states, as well as of the United States Supreme Court and the recognized and renowned commentators on the source and meaning of the provisions of our federal constitution and Bill of Rights, are replete with expressions reflecting that the primary purpose for the guaranty of freedom of speech and the press in the First Amendment was to insure that *previous restraints* upon the publication of beliefs, whether spoken or written, would be prohibited—not that those disseminating them could do so with inpunity and thus go unchallenged if the consequences of such publication unjustifiably damaged others. See, *Patterson v. Colorado*, 205 US 454, 51 L ed 879; *Near v. Minnesota*, 283 US 697, 75 L ed 1357; *Schenck v. US*, 249 US 47, 39 S. Ct. 247, 63 L ed 470; *State v. Van Wye*, 136 Mo. 227, 37 SW 938; *State v. Boyd*, 86 N.J.L. 75, 91 A. 586; *National Labor Relations Board v. Blatt Co.*, 143 F. 2d 268, certiorari denied 65 S. Ct. 135, 323 US 774, 89 L ed 619; *People v. Feiner*, 300 N.Y. 391, 91 NE 2d 316, affirmed 71 St. Ct. 303, 340 US 315, 95 L ed 267; *Times Film Corporation v. City of Chicago*, 139 F. Supp.

837, affirmed 244 F. 2d 432, reversed on other grounds at 78 S. Ct. 515, 355 US 35, 2 L ed 2d 72; *Shively v. Garage Employees Local Union No. 44*, 108 P. 2d 354, 6 Wash. 2d 560; *Baxley v. U.S.*, 134 F. 2d 937; 6 R.C.L. 253, Sections 239-242; 33 Am. Jur. 291, Section 308, et seq., and the authorities therein cited."

"To state it succinctly as was done in *State v. Van Wye, supra*, "The laws punishing criminal libel have never been deemed as infringement of this constitutional guaranty." In that decision it was further pointed out that "The constitutional liberty of speech and of the press, as we understand it, simply guaranties the right to freely utter and publish whatever the citizen may desire, and to be protected in so doing, *provided, always, that such publications are not blasphemous, obscene, and scandalous in their character, so that they become an offense against the public, and, by their malice and falsehood, injuriously affect the character, reputation, or pecuniary interests of individuals. The constitutional protection shields no one from responsibility for abuse of this right.*" (The emphasis has been supplied.)

"In discussing the purpose of these constitutional privileges as historically conceived and guaranteed, the United States Supreme Court, in *Near v. Minnesota, supra*, pointed out: "In determining the extent of the constitutional protection, it has been generally, if not universally, considered that it is the chief purpose of the guaranty *to prevent previous restraints upon publication.* The struggle in England (from which country the criminal law of Louisiana is deraigned), directed

against the legislative power of the licenser, resulted in renunciation of the censorship of the press. The liberty deemed to be established was thus described by Blackstone: 'The liberty of the press is indeed essential to the nature of a free state; but this consists in laying *no previous restraints upon publication, and not in freedom from censure for criminal matter when published.* Every freeman has an undoubted right to lay what sentiments he pleases before the public; to forbid this, is to destroy the freedom of the press; but *if he publishes what is improper, mischievous, or illegal, he must take the consequences of his own temerity.*' " 283 US at pages 713 and 714. (The emphasis and words within brackets have been supplied.)"

1. The Louisiana Supreme Court did not hold that the Louisiana Defamation Statute was applied as a sedition act for criticism of public officials

Seditious libel is a crime tending to destroy organized government or constituted authority.

Criminal defamation does not concern the security of government but is a crime involving injury to individuals which can result in breach of the peace. Appellant was not prosecuted for criticism of government, but for defaming individuals.

Sedition is the raising of commotions and disturbances in the state or a revolt against legitimate authority, and an accusation of sedition is libelous per se as imputing a crime. *Arizona Public Company v. Harris*, 181 P. 373, 375, 20 Arizona 446.

The term sedition means something more than theoretical discussion. *State v. Aspelin*, 203 P. 964, 965, 118 Wash. 331.

The offense known in England as "sedition" consisted of speaking or writing against the character and constitution of the government, or seeking to change it by any means except those prescribed. *State ex inf. Crow v. Shephen*, 76 S. W. 79 83, 177 Mo. 205.

Sedition is the incitement of discontent against government or of resistance to lawful authority. Chafee, *Free Speech in the United States* (1954) p. 497. It consists of the wilful utterance, writing, or publication of disloyal, scurrilous or abusive matter against the nation, or a state, which matter advocates or encourages opposition and hostility to organized government. 47 *Am. Jur.* page 610; 46 *Corpus Juris Secundum* pp 1085, 1087-1088. The purpose of sedition statutes is to protect the life of the state, and an intent to overthrow the government is an essential element of the offense. Sedition statutes have no relation to acts, criminal or otherwise, which was wrongs against persons or property as such and cause merely incidental harm to the state. "A seditious libel must be directed against the political system of government; mere attacks on the personnel of government do not necessarily tend toward sedition." 47 *Corpus Juris Secundum*, pp 1093-1094; *People v. Edmondson*, 4 N. Y. S. 2d 257, 168 Misc. 142.

Sedition is defined in Black's Law Dictionary (Deluxe Fourth Edition) as "attempts made by meet-

ings or speeches, or by publications, to disturb the tranquility of the state," citing *Arizona Public Company v. Harris*, 181 P. 373, 375, 20 Arizona 446. Seditious libel is also defined in Black's Law Dictionary as being, in English Law, a written or printed document published with the intention to excite dissatisfaction against the government and constitution as established by law, or to excite citizens to attempt to alter established constituted authority by other than lawful means, or to promote feelings of hostility between different classes.

The federal Sedition Law of July 14, 1798 (See Appendix A) did not punish injury to private reputation but was aimed at the publication of false and malicious matters against government, intending to incite people to oppose and defeat laws and official action. This law was never judicially declared violative of the First Amendment. Rather, because of its unpopularity, it was allowed to expire of its own limitation in 1801. See Cooley, *Constitutional Limitations*, (8th ed.) Vol. 2, p. 900.

Appellant's position is that all criminal prosecutions for defamation are prohibited by the First and Fourteenth Amendments when they concern statements defaming public officials. Appellant cites no authority for this incredible proposition, for no court has ever held this. Appellant argues further that any criticism of a public official is seditious libel, that all appellant did was to criticize public officials and that his prosecution is therefore nothing more than a

prosecution for seditious libel, which was unpopular with the American colonists and has fallen into disrepute.

Mere criticism of public officials is not seditious libel. There must, in addition, be an incitement against organized government, as amply demonstrated by authorities hereinabove cited. Appellant was not tried for "destroying the confidence of the people in their officers," or for "sapping the foundation of the government," or for "examining public characters and measures," or for "criticism of government," or for "expression on matters within the public domain." Appellant was tried for maliciously publishing an expression which exposed eight individuals, who happened to be judges, to hatred, contempt, and ridicule, under "the ordinary law of libel", as sanctioned by Professor Corwin in *Freedom of Speech and Press under the First Amendment*, 30 Yale Law Journal 48, 51 (See page 23 of appellant's brief.)

The publication in question was not a mere narrative or criticism of official conduct or the propriety of official procedure; not a plea for reform of the judicial system or the exposure of any idea or philosophy of official conduct. The thrust of the publication was an attack on the worth of judges as individuals and an attack on their personal reputations.

Appellant went beyond mere criticism of public officials and attacked the personal integrity of each of the eight criminal court judges as individuals when he stated that they were influenced by racketeers

and that they blocked his vice investigations because they were sympathetic to vice. Appellant did not state any facts from which the inference that the judges were sympathetic to and influenced by racketeers could reasonably be drawn. He asserted that as a matter of fact this condition of racketeer influence existed, and his statement was an out-an-out falsehood.

There is a difference between criticism or fair comment on admitted facts and the assertion of unsubstantiated facts. "Privilege does not extend to the publication of false statements of fact concerning public officers." *Martin v. Markley*, 202 La. 291, 11 So 2d 593. "It is one thing to state admitted facts and comment thereon, and quite another to accuse a man of wrongdoing on unproved allegations." *Madison v. Bolton*, 234 La. 997, 102 So.2d 433, 438, n. 6; see also *State v. O'Donnell*, 141 La. 886, 75 So. 811; *Kennedy v. Item*, 213 La. 347, 34 So 2d 886; *Naihaus v. La. Weekly Pub. Co.*, 176 La. 240, 145 So. 527; *Deshotel v. Thistlewaite*, 240 La. 12, 121 So 2d 222, 225; *Cadro v. Plaquemine Gazette*, 11 So 2d 10; *Miller v. Capital City Press*, 142 So. 2d 462, 473; Odgers, on Libel (5th ed.), p. 197; Marr's *Criminal Jurisprudence of Louisiana*, pp. 215-216; Cooley's Constitutional Limitations (8th ed.) Vol. 2, pp. 920-922.

In *Deshotel v. Thistlethwaite*, 240 La. 12, 121 So 2d 222, the court stated:

"Louisiana recognizes the doctrine of qualified

> privilege respecting fair comment and criticism of public officers and men in public life, but 'the privilege does not extend to the publication of false statements of fact concerning public officers'."

This has always been the thinking of scholars in Louisiana. As Edward Livingston stated in 1822 in his introductory report on the Louisiana Code of Crimes and Punishments:

> "But when any of the public functionaries, in either of the great branches of government, are personally attacked—when animadversions on public proceedings are made the vehicle for injury to private character — then the law protects them as it does any other individuals; and, although there can be no libel against the government, or the court, yet the legislator and the judges are not left without the same redress that is given to their fellow citizens."

Complete Works of Edward Livingston, Volume 1, page 292.

The purpose of criminal libel or defamation statutes is twofold: the preservation of the public peace and the protection of all members of society from injury resulting from malicious utterances. See *Republica v. Oswald*, 1 U.S. 319, 1 dall 319, 1 L. Ed. 155; *Beauharnais v. People of Illinois*, 343 U.S. 250, 96 L.Ed. 919, 72 S. Ct. 725; *Chaplinsky v. New Hampshire*, 315 U.S. 568, 86 L. Ed. 1031, 62 S. Ct. 766; Burdick, *The Law of Crime*, Vol. 3, Sec. 786, pp. 151-152; 2 Wharton's *Criminal Law*, Sec. 878.

741; Note, 52 Col. L. Rev. 521, 528; Anno., 19 A.L.R. 1470-1543; Tanenhaus, *Group Libel*, 35 Cornell Law Quarterly 261, 273; Dean, *Hatred, Ridicule or Contempt* (1954) p. 10.

Not only does a state have an interest in protecting its citizens from injury inflicted by defamatory utterances and an interest in preventing breaches of the peace caused by defamatory utterances, but such insulting or "fighting words" as those used by appellant are abuses of the First Amendment and are of such slight social value that their prevention and punishment raises no constitutional problem. *Chaplinsky v. New Hampshire, supra; Beauharnais v. Illinois, supra; Bantam Books, Inc. v. Sullivan*, 83 S. Ct. 631; Cooley, *Constitutional Limitations* (8th Ed) Volume 2, pp. 883-884, 886, 938-939.

There is nothing in the record to support appellant's claim that "preservation of magistrates from seditious utterances, rather than preservation of the peace" was "the real motivating factor for appellant's defamation prosecution."

Nor is there any authority (other than Emerson's theory in a law review article) for appellant's

[1]"No man may disparage the reputation of another, for every man has a right to have his good name maintained unimpaired; his right is a *jus in rem*, absolute and good against the world. . . . The law is just as studious of the reputation and character as of the property of the citizen." Marr's *Criminal Jurisprudence of Louisiana* (2d Edition) Vol. 1, pp. 197-198; see also American Jurisprudence, *Verbo* Constitutional Law, Sec. 328; Le Buffe and Hayes, *The American Philosophy of Law*, (4th Edition 1947) pp. 234-238.

view that preservation of the peace no longer requires criminal prosecution for private defamation; that, after all, violence is old-fashioned because people generally accept the rules of law in their disputes.

This Epimethean concept denies reality and overlooks the henious crimes of violence in Dallas, Texas, of November 22 and 24, 1963. These crimes, it has been charged by those in authority, are a result of "the hate and venom poured into the bloodstream of America" by hate-engendering speakers.

The Louisiana defamation statute prohibits the spreading of hate in order to prevent breaches of the peace by revenge-seeking victims, their relatives, and friends. This is a legitimate interest of the State.

As Edward Livingston stated in 1822 in his Introductory Report to the Louisiana Code of Crimes and Punishments:

> "If lawgivers had originally condescended to pay some attention to the passions and feelings of those for whom they were to legislate, these appeals to arms would never have usurped a power superior to the laws; but by affording no satisfaction for the wounded feelings for honour, they drove individuals to avenge all wrongs of that description, denied a "place in the code of criminal law. . . . The satisfaction by private suit must necessarily be of a pecuniary nature. Men, therefore, who think highly of reputation are unwilling to have theirs appreciated by that standard. They will, then, either suffer the injury to go unpunished, *or they will in this, as in most other cases where no remedy, or an inadequate one,*

> *is provided, take the law into their own hands;* and it is no improbable conjecture, that a very great proportion of the many breaches of the peace, and deaths by duels, which originate in verbal provocation, might have been avoided, had an adequate satisfaction been provided by law. . . . The happiness of individuals, the quiet of families, and the peace of society, depend so much on the protection given by the laws to reputation, that this title is more minute in its provisions than many of the others."

Complete Works of Edward Livingston, Volume 1, pages 293, 294, 295, 296. See also Marr's Criminal Jurisprudence of Louisiana (2d Ed.) p. 197.

In early times, if someone put out your eye, you waylaid him and knocked his brains out; if someone destroyed your reputation, you waylaid him and committed mayhem. But there came a time in the development of civilization when it was determined that personal revenge should not be allowed and that in the public interest, constituted authority should prevent acts of personal revenge by taking unto itself the prevention and punishment of crime. See Wormser, *The Law* (1949), page 16.

As pointed out by Livingston, men respect the rule of law when there is a remedy in court for offenses against their private reputation. Deprived of this remedy, the victim, his family, and friends would again resort to taking the law into their own hands to avenge malicious damage to their reputation. This is an evil (breach of peace, assault, battery, or other

unlawful trespass) that Louisiana in its criminal defamation statute has sought, and has the right to seek, to prevent.

It makes as much sense to claim that the resort of frustrated men to violence is outdated as to claim that the hypothalamus and the adrenalin glands are outdated. There is a clear and present danger that the average person, as the Louisiana law of defamation wisely recognizes, is likely to be provoked to breaches of the peace by defamatory utterances against himself or his loved ones.

Perhaps a member of that infinitesimally small segment of our society known as the "intellectual elite" would not resort to violence for vengeance if he were called a racketeer; but a state cannot create classifications within its criminal libel statute by providing that intellectuals and judges are not pugnacious, whereas truckdrivers and prizefighters are; that therefore defamatory utterances against the former are not criminal, but those against the latter are. This would be the effect of maintaining appellant's position. Appellant has lost sight of the fact that laws are enacted to cope with reality, and not for the idealist's version of Utopia.

Finally, appellant's argument that all defamation statutes are invalid and that an absolute privilege ought to attach to any defamatory utterance against a public official, no matter how false, malicious, and personally abusive, is not supported by any authority. Appellant seeks to substitute his judgment for

that of the Legislature of Louisiana, which has determined that absolute privilege exists only for legislators and judges in the course of their official duties, and for witnesses during a trial (R.S. 14:50) .

With reference to comments on public officials, the Louisiana Legislature has declared that only a qualified privilege, based on reasonable belief, exists. This privilege is qualified in that it can be destroyed by the actual malice which was proved in the case at bar. (R.S. 14:49)

It is the province of the legislative body to determine the question of absolute and qualified privilege, and appellant's arguments as to the wisdom of these provisions have no bearing on their constitutional validity.

2. Clear and present danger is not involved as appellant was prosecuted for the crime of defamation and not the offense of contempt of court.

In order to facilitate the Court in its comparison of the Louisiana defamation statute and the Louisiana statutory provisions defining what constitutes contempt of court, the latter statutes are included in Appendix B of this brief. (C.C.P. Articles 221-227; R.S. 13:4611, R.S. 15:11 & 12)

An examination of Louisiana's statutory provisions on contempt reveals that they set forth the standard concept of contempt as an interference with the orderly administration of justice or an impairing of the dignity of a court.

Appellant herein was not prosecuted for obstructing justice or for affronting the dignity of a court or for criticizing the official conduct of judges.

Appellant herein was not convicted of contempt of court.

Appellant herein was prosecuted for and convicted of defamation of individuals involving injury to their personal reputations, under R.S. 14:47-50.

Contempt is essentially an offense against the orderly administration of justice, while defamation is essentially a crime against society involving injury to individual human beings.

The purpose of contempt proceedings, which arise from the inherent power of courts to prevent obstructions of justice, is to protect judicial authority from obstruction in the performance of its duties. *Ex parte Hudgings*, 39 S. Ct. 337, 249 U.S. 378, 63 L.Ed. 656; *Bridges v. California*, 314 U.S. 252, 62 S. Ct. 190; *Pennekemp v. Florida*, 66 S. Ct. 1029, 328 U.S. 331, 90 L.Ed. 1295; *Wood v. Georgia*, 82 S. Ct. 1364, 370 U.S. 375, 8 L.Ed. 2d 569. "Contempt proceedings are sui generis, neither civil actions nor prosecutions for offenses, within the ordinary meaning of these terms, but an exercise of the power inherent in all courts to enforce obedience, something they must possess in order to perform their functions." *Meyers v. U.S.*, 44 S.Ct. 272, 264 U.S. 95, 68 L.Ed. 577. "A criminal contempt involves no element of personal injury. It is directed against the power and dignity of the court, and private parties have little, if any interest in the

proceedings for its punishment." *Bessette v. Conkey*, 24 S.Ct. 665, 194 U.S. 324. See *The Constitution and Contempt*, 61 Mich. L. Rev., 283, 297-298, 303, 350.

"Contempt sanctions are aimed at misconduct which interferes with governmental activity." 61 Michigan Law Review 318.

In contempt proceedings, neither truth, nor privilege, nor the absence of malice are defenses. In direct contrast, all of the latter safeguards are present in the Louisiana defamation statute.

The Louisiana defamation statute contains all the standards of civil libel. Like civil libel, it is based on injury to reputation, which must be proved as an element of the crime. See Dean, *Hatred Ridicule, or Contempt* (1954) pp. 10-14; R.S. 14:47.

As in civil libel, the Louisiana Defamation statute provides for truth as a defense. R.S. 14:48. Failure to allow truth as a defense is what led to the widespread criticism of the trial of Peter Zenger, which is relied on heavily in appellant's brief. See Wormser, *The Law* (1949) pp. 327-328. The criticism of the Zenger case could have no application to the Louisiana defamation statute, which provides for the taking of truth into consideration.

Under the Louisiana defamation statute, truth is not tied to the presence of good motives, as appellant erroneously states on page 43 of his brief. Appellant confuses the defense of "justifiable motive", in the event falsity is proved, with the defense of truth under R.S. 14:48. R.S. 14:48 provides that

"where such a publication or expression is true, actual malice must be proved in order to convict the offender." This means that when the defendant proves truth, the state must then prove actual (not implied) malice. The defendant does not have to show "good motives" in order to avail himself of the defense of truth. All he has to prove is the truth. Then it becomes necessary for the state to prove actual malice as an element of the crime.

Further, the civil libel standard of fair comment, allowing a high degree of freedom of expression, is used in Louisiana's criminal defamation statute. R.S. 14:49; see Note, *Constitutionality of the Law of Criminal Libel*, 52 Columbia Law Review 521, 532.

Under the privilege granted by the standard of fair comment, it is not necessary for the defendant to prove truth. All that is necessary is a "reasonable belief," which allows an extremely high degree of freedom of expression. Recently in *State of Louisiana v. Webster*, No. 46, 709 of the Docket of the Louisiana Supreme Court (December 16, 1963) 159 So 2d 140, the court set aside a conviction for defamation on the ground that the defendant had not been allowed to adduce evidence of a reasonable belief in her comment on privileged matter. We quote from the court's opinion as follows:

> "In our opinion the evidence should have been received. Undoubtedly, the qualified privilege provided for in LRS 14:49(2) (a) (quoted above) obtains in the instant matter, for the publication

falls squarely within the language of that section. And under the protection of such privilege the defendant cannot be convicted of defamation unless her writing was actually malicious, regardless of whether it was true or false. Therefore, only proof of malice could have counteracted the privilege.

As we noted in *State v. Garrison*, supra, malice involves intent, and such intent may be inferred by circumstances connected with or surrounding the transaction. Just as the state may show a malicious intent by extrinsic evidence so, too, a defendant must be permitted to introduce evidence of that nature to negative a malicious motive; that is, he may show circumstances from which a judge or jury might conclude that the utterance was made in the reasonable belief of its truth.

To require a defendant to prove the truth of an utterance before permitting him to introduce evidence of circumstances which would refute the state's proof of malicious intent would be to destroy the privilege entirely and, in effect, wipe out the aforementioned provisions of LRS 14:49. Hence, it follows that the court erred in holding that the testimony was admissible only to corroborate direct evidence of the truth of the defamatory statement. In other words, inasmuch as the statement was privileged the defendant was not required to show its truth; she had only to rebut the state's proof of malice in its utterance."

Contrary to appellant's view, his prosecution for defamation, with all of its substantive safeguards,

could not have been an attempt to substitute defamation for contempt of court.

Procedurally, summary contempt proceedings against the contemnor are tried by the same judge. By contrast, the appellant's conviction in the instant case, tried before by an impartial judge (R 25) from a different judicial district approximately three hundred miles from New Orleans, was based on an ordinary and regular criminal trial clothed with all the safeguards provided under the Louisiana Constitution and Statutes. In the instant case, the State of Louisiana proceeded in the normal and regular way as with any trial of any individual accused of a misdemeanor.

Whether appellant *might* have been punished for contempt of court is not determined here and is of no moment in the decision of this case. In *Jurney v. Mac Cracken*, 294 U.S. 125, (1935) this Court dismissed the argument that a defendant was immune from punishment for contempt because his single act constituted a statutory crime as well. Conversely, punishment for a statutory crime such as defamation is not precluded because punishment *might* also have been inflicted for the same act as a contempt of court under the court's inherent powers.

In *Bridges v. State of California*, 62 S. Ct. 190, 314 U.S. 252, the first contempt case in which this court applied the test of "clear and present danger to the administration of justice," the court pointed out at the outset that it was not dealing with state

legislation restricting a specific evil but with the inherent power of courts to punish for contempt. The court stated the following:

> "It is to be noted at once that we have no direction by the legislature of California that publications outside the court room which comment upon a pending case in a specified manner should be punishable. As we said in *Cantwell v. Connecticut*, 310 U.S. 296, 307-308, such a 'declaration of the State's policy would weigh heavily in any challenge of the law as infringing constitutional limitations.' But as we also said there, the problem is different where 'the judgment is based on a common law concept of the most general and undefined nature.' Id. 308. Cf. *Herndon v. Lowry*, 301 U.S. 242, 261-264. For here the legislature of California has not appraised a particular kind of situation and found a specific danger sufficiently imminent to justify a restriction on a particular kind of utterance. The judgments below, therefore, do not come to us encased in the armor wrought by prior legislative deliberation. Under such circumstances, this Court has said that 'it must necessarily be found, as an original question,' that the specified publications involved created 'such likelihood of bringing about the substantive evil as to deprive (them) of the constitutional protection.' *Gitlow v. New York*, 268 U.S. 652, 671."

In *Wood v. Georgia*, supra, the most recent contempt case in which the "clear and present danger to the administration of justice" standard was applied, the court again pointed out that there was no state

statute allowing the prosecution for contempt, and that, in fact, there was a state statute expressly limiting contempt power over out-of-court statements. The Court stated:

> "Initially, however, it should be noted that the Georgia courts have determined that the power to punish for contempt of court is inherent in its state judiciary and the Court of Appeals thus ignored the express limitations imposed by the Georgia Legislature in punishing out-of-court statements. This holding thus deprives the judgment of coming to this Court 'encased in the armor wrought by prior legislative deliberation,' *Bridges v. California*, supra, 314 U.S. at 261, 62 S.Ct. at 192, and it is upon this basis that we proceed."

In all state contempt-of-court cases wherein this court has applied the standard of "clear and present danger to the administration of justice," including *Pennekamp v. Florida*, *supra*, and *Craig v. Harney*, 67 S. Ct. 1249, 331 U.S. 367, 91 L. Ed. 1546, there was no state statute involved, and thus no legislative determination of a specific danger.

"Where the legislative body itself has previously determined the danger of substantive evil arising from utterances of a specified character, the question whether any specific utterance coming within the prohibited class is likely, in and of itself, to bring about the substantive evil, is not open to consideration; it is sufficient that the statute itself is constitutional and that the use of the language comes within its pro-

hibition." 47 Am Jur p. 620; *Gitlow v. New York*, 268 US652, 69 Led 1138, 45 Sct 625; *Dennis v. United States*, 341 U.S. 494, 510, 71 S. Ct. 857, 867.

"Clear and present danger . . . has no application . . . where the legislative body itself has previously determined the danger of substantive evil arising from utterances of a specified character." *Gitlow v. New York, Supra.*

Cantwell v. Connecticut, 310 U.S. 296 60 S. Ct. 900, 84L. Ed. 1213 (1940) also dealing with First Amendment rights, recognized this principle, as follows:

> "Conviction on the fifth count was not pursuant to a statute evincing a legislative judgment that street discussion of religious affairs, because of its tendency to provoke disorder, should be regulated. . . Violation of an Act exhibiting such a legislative judgment and narrowly drawn to prevent the supposed evil, would pose a question differing from what we must here answer. Such a declaration of the State's policy would weigh heavily in any challenge of the law as infringing constitutional limitations. Here however, the judgment is based on a common law concept of the most general and undefined nature. . . ."

The Louisiana criminal defamation statute (R.S. 14:47-50) evinces a legislative judgment that the dissemination of hatred and the injury to personal reputation tends to cause acts (such as breach of the peace, or assault and battery, or murder) which the State of Louisiana has a right to prevent. Clear and present

danger therefore has no application because the legislative body itself has previously determined the danger.

Like civil libel, the nub of the crime of defamation is injury to personal reputation, and the state's interest lies in the prevention of acts of violence which are injurious to the public welfare and which the Legislature has determined arise from the conduct proscribed by Section 47 of Title 14 of the Louisiana Revised Statutes of 1950. See Burdick, *The Law of Crime*, Volume 3, Sec. 786, p. 152.

The statute is narrowly drawn to prevent the evil against which it is directed. It regulates the hatemonger rather than the misguided citizen. It is patterned after the law of civil libel and contains all of its safeguards.

It defines hatred as involving actual malice where truth or qualified privilege exist. (R.S. 14:48, 49) See *State v. Lambert*, 188 La. 968, 178 So. 508; *State v. Bienvenu*, 36 La. Ann. 378.

The Louisiana criminal defamation statute takes great pains to see that freedom of discussion in matters of public concern is not jeopardized. It recognizes that judges, like other public officials, are not above criticism, and that fair criticism of judges in the absence of actual malice is privileged.

On the other hand, the Louisiana Statute also recognizes that malicious resort to personal abuse is not in any proper sense communication of information or opinion safeguarded by the First Amendment. In

terms of First Amendment rights, the Louisiana Defamation Statute recognizes the right to discuss and criticize public men and issues freely, but it recognizes that such a right may be abused. It sets forth the conditions under which abuse exists, and it imposes sanctions for such abuse.

It has always been recognized by this Court that freedom of speech is not absolute, and that its abuse may be dealt with through criminal sanctions. *American Communications Assn. v. Douds*, 339 U.S. 382, 70 S. Ct. 674, 683-684 (1950)

"The character of every act depends upon the circumstances in which it is done. . . . The most stringent protection of free speech would not protect a man in falsely shouting fire in a theater and causing a panic." Holmes J. speaking, in *Schenck v. U.S.* 249 U.S. 47 (1919). See also Le Buffe and Hayes, *The American Philosophy of Law* (4th ed., 1947, Crusader Press) pp. 234-238.

Speaking of the First Amendment right of free speech, this Court had the following to say in *DeJonge v. Oregon*, 299 U.S. 353, 57 S. Ct. 255, 81 L. Ed. 278 (1937):

> "These rights may be abused by using speech or press or assembly in order to incite to violence or crime. The people through their Legislatures may protect themselves against that abuse."

In *Near v. Minnesota*, 283 U.S. 697, 51 S. Ct. 625, 75 L. Ed. 1357 (1931), a case involving censorship or previous restraint, this Court stated:

> "It is recognized that punishment for the abuse of the liberty accorded to the press is essential to the protection of the public, and that *the common-law rules that subject the libeler to responsibility for the public offense, as well as for the private injury, are not abolished by the protection extended in our constitution.* . . . Public officers, whose character and conduct remain open to debate and free discussion in the press, find their remedies for false accusations in actions under libel laws providing for redress and punishment, and not in proceedings to restrain the publication of newspapers and periodicals. . . . *Subsequent punishment for such abuses as may exist is the appropriate remedy consistent with constitutional privilege.*" (Emphasis supplied.)

Appellant's malicious, false and personally abusive statement was an abuse of the liberty of free speech accorded by the First Amendment.

The First Amendment protects the right of political opposition and the right of socially significant utterances. But it does not protect socially valueless expression* which maliciously injures personal reputa-

*Appellant's extreme view, expressed on pp. 26-27, 47 of his brief, that limitation of constitutional protection to communication of matters of public concern would be dangerous in practice, that all criminal libel laws should therefore be struck down, and there should be no limits whatever on speech, apparently is based on the idealist view that "what is true will survive." According to Max Lerner, this view is derived from Milton's formulation in his Areopagitica as follows:

> "And though all the winds of doctrine were let loose to play upon the earth, so Truth be in the field, we do

tion and tends to cause acts of violence which the state has a right to prevent. Such expressions constitute abuses of free speech. *Chaplinsky v. New Hampshire*, 315 U.S. 568, 62 S. Ct. 766, 86 L. Ed. 1031; Pound, *Equitable Relief Against Defamation and Injuries to Reputation*, 29 Harvard Law Review 640, 651-653; Note, 51 Columbia Law Review 98, 99 note 7; Kelly, *Criminal Libel and Free Speech*, 6 Kansas Law Review 295, 325.

Turning our attention to the case at bar, we must ask the following question:

> "Of what possible social value could there be in appellant's false and malicious statement that the eight criminal court judges were sympathetic to vice and influenced by racketeers?"

Since this false, malicious, and personally abusive statement fails the "social value" test and abuses the right of free speech, it is not protected by the First Amendment, and the "clear and present danger" test is not applicable.

The latter test is inapplicable for the further reason that the Louisiana criminal defamation statute constitutes a legislative determination of a specific evil which the state has a right to prevent by re-

---

injuriously by licensing and prohibiting to misdoubt her strength. Let her and Falsehood grapple; who ever knew Truth put to the worse, in a free and open encounter?"

Lerner, *The Mind and Faith of Justice Holmes* (1954) pp 290-291. Mr. Lerner rejects this view, as well as the "survival" theory of truth, as dangerous, unworkable and impractical.

stricting the abuse of free speech. Legislative judgment should not be questioned unless outside the pale of fair judgment. *American Communications Assn. v. Douds*, 339 U.S. 382, 70 S. Ct. 674 (1950).

The Louisiana Defamation Statute is a fairly drawn statute based upon a reasonable legislative judgment. It wisely protects fair criticism of all public men, but restricts malicious, false, personal abuse directed at any citizens, including judges.

To borrow the language of the *Douds* case, *supra*, "we have here no statute which is either frankly aimed at the suppression of dangerous ideas nor one which, although ostensibly aimed at the regulation of conduct may actually be made the instrument of arbitrary suppression of free expression of views. There are here involved none of the elements of censorship or prohibition of the dissemination of information that were present in the cases mainly relied upon by those attacking the statute."

Finally, it should be noted that Emerson, *Toward a General Theory of the First Amendment*, 72 Yale Law Journal 877, 912, quoted at length in appellant's brief, states that the "clear and present danger test must be regarded as unacceptable" and that it was discarded by this Court in *Dennis v. U.S.* 341 U.S. 494, 71 S. Ct. 857, 95 L. Ed. 1137.

In determining the meaning of the clear and present danger test in the *Dennis* case, *supra*, this court rejected a similar contention as that which appellant makes herein: that the probability of the dan-

ger sought to be prohibited by the statute must be shown in every prosecution under the statute. This Court stated the following:

> "We must therefore reject the contention that success or probability of success is the criterion."

The test which the court adopted was whether the State's interest is sufficiently substantial to warrant the restriction of speech necessary to avoid the danger.

It is submitted that the State of Louisiana has the right to exercise a legislative judgment that breach of the peace and other crimes of violence are likely to arise from malicious defamatory utterances, and to prevent such socially valueless utterances in order to preserve the peace in the public interest.

3. There is no federal question involved as a right to jury trial in a state prosecution is not a fundamental of due process under the First or Fourteenth Amendments or any other provision of the federal constitution.

The appellant contends that the Louisiana Defamation statute is unconstitutional in its application to criticism of judges, or in the alternative that criticism of judges may not constitutionally be punished without trial by jury. Under this tenuous theory, appellant concedes that the Sixth Amendment does not guarantee trial by jury in a state prosecution; however, he attempts by legal legerdemain to read the provisions of the Sixth Amendment into the right of freedom of speech provided for by the First Amend-

ment. No legal authority is cited to support this theory. Appellant justifies his argument through his version of the historical developments of sedition, contempt of court, and criminal libel statutes. Treating the offense of contempt of court and the crimes of sedition and criminal libel as one, interchangeably, appellant lifts language from court decisions on these subjects and arrives at the conclusion that the First Amendment inherently insures one of the right to trial by jury.

Appellee would like to call the Court's attention to the pertinent provision of the Louisiana Constitution of 1921 and the Revised Statutes of Louisiana dealing with trial by jury as applicable to the instant case.

Article VII, Section 41, of the Louisiana Constitution of 1921, provides:

> "* * * *All cases in which the punishment may not be at hard labor shall, until otherwise provided by law, be tried by the judge without a jury*. Cases, in which the punishment may be at hard labor, shall be tried by a jury of five, all of whom must concur to render a verdict; cases, in which the punishment is necessarily at hard labor, by a jury of twelve, nine of whom must concur to render a verdict; cases in which the punishment may be capital, by a jury of twelve, all of whom must concur to render a verdict." (Emphasis ours.)

LSA-R.S. 15:340 recites:

"Every misdemeanor shall be triable by the judge

without the intervention of a jury."

LSA-R.S. 15:341 states:

"A misdemeanor is defined to be an offense, the punishment of which is necessarily a fine or imprisonment in the parish jail or both."

LSA-R.S. 14:47, under which the defendant was charged, provides that, "Whoever commits the crime of defamation shall be fined not more than three thousand dollars, or imprisoned for not more than one year."

There is no provision in the Constitution of the United States requiring a state to try misdemeanors by jury.

Appellant correctly concedes that in no manner is Article 6 of the Bill of Rights a limitation on the State; and that it is inapplicable to State proceedings. See 31 Am.Juris., Verbo, Jury, Sections 8-10, pp. 14-17, 16 R.C.L. pp. 200, Section 19 and Supp. pp. 4060, Section 19; 22 A.L.R. 1504. However, appellant attempts by legal legerdemain to assert that trial by jury is a fundamental right of freedom of speech constitutionally guaranteed to him. Appellant cites no authority for this proposition. *Nye v. U.S.*, 313 U.S. 33, cited by appellant as emphasizing the jury question, had nothing to do with freedom of speech under the first amendment, but merely involved the construction of an 1832 amendment of the 1789 federal statute concerning summary contempt by Federal Courts. All that the court pointed out was that abuses of the summary nonjury contempt power by federal

judges had led Congress to enact the amendment. The other case cited by appellant as "emphasizing the jury question" is *Craig v. Harney*, supra, a contempt proceeding wherein the Court was concerned with the self-interest of the same judge whose conduct was criticized to sit in judgment upon the contemnor, and summarily, and without a jury trial, to punish him.

The instant case does not involve the power of the same judge who was defamed to sit in judgment upon the defamer. The prosecution of appellant was no "Star Chamber summary non-jury process." Appellant was convicted only after a regular criminal trial before a different judge who had no personal interest whatever in the case.

It has long been settled that trial by jury is not embraced in the rights secured by the fourteenth amendment to the Federal Constitution. *New York Central Railroad v. White*, 243 U.S. 188 37 S. Ct. 247, 61 L.Ed. 667; *Hawkins v. Bleakly*, 243 U.S. 210, 37 S.Ct. 255, 61 L.Ed. 678; *Snyder v. Massachusetts*, 291 U.S. 97, 78 L.Ed. 674, 54 S.Ct. 330; *Chappell Chemical Company v. Sulphur Mines*, 172 U.S. 474, 43 L.Ed. 520, 19 S.Ct. 268; *Southern Railway Company v. Durham*, 266 U.S. 178, 45 S.Ct. 51, 69 L. Ed. 231; 31 Am. Jur Verbo Jury, Sections 8-10, pp. 14-17. Accordingly, when state statutes prescribe the trial of issues by a judge without a jury, there is nothing in the federal constitution requiring trial by jury. *Southern Railway Company vs. Durham*,

supra, *Dorr v. U.S.*, 24 S. Ct. 808, 195 U.S. 138, 49 L.Ed. 128; *Tumey v. Ohio*, 273 U.S. 510, 71 L.Ed. 749, 47 S. Ct. 437.

4. There is no federal question involved because the United States Supreme Court has previously determined that a criminal prosecution by a state under a defamation statute does not violate the First or Fourteenth Amendments.

At the outset appellee points out that the United States Supreme Court has had the occasion to pass on constitutionality of criminal libel statutes. On numerous occasions the Court has consistently held that such statutes are within the police power of the State and that they do not violate the First Amendment.

The Constitution of the State of Louisiana recognizes that freedom of speech is not an absolute privilege but is limited to the extent that one is responsible for the abuse of this liberty.

Article 1, Section 3, of the Louisiana Constitution provides as follows:

> "No law shall ever be passed to curtail or restrain the liberty of speech or of the press; any person may speak, write and publish his sentiments on all subjects, *being responsible for the abuse of that liberty.*"

It is well settled that libelous or slanderous utterances are not protected by the freedom of speech guarantee of the first and fourteenth amendments of

the U.S. Constitution. *Republica v. Oswald*, 1 U.S. 319, 1 Dall 319, 1 L.Ed. 155; *Chaplinsky v. State of New Hampshire*, 62 S. Ct. 766, 315 U.S. 568, 86 L.Ed. 1031; *Beauharnais v. People of Illinois*, 72 S.Ct. 725, 343 U.S. 250, 96 L.Ed. 919; *Roth v. U.S.*, 77 S. Ct. 1304, 354 U.S. 476, 1 L.Ed. 2d 1498; *Breard v. City of Alexandria*, 71 S.Ct. 920, 932, 341 U.S. 622; *Gitlow v. New York*, 268 U.S. 652, 45 S.Ct. 625, 69 L.Ed. 1138; *Near v. Minnesota*, 283 U.S. 697, 51 S.Ct. 625, 75 L.Ed. 1357.

Prior to discussing what the appellee considers the landmark cases on this subject it should be pointed out that the appellant was tried in the same manner as any other person who committed a misdemeanor that would lead to a breach of peace. Appellee felt that this should be emphasized as there are insinuations in appellant's brief that there were political implications in the trial in the lower court. The record will reveal beyond a doubt that this case was tried in the ordinary manner and that the accused was afforded all of his legal rights.

This trial was nothing more or less than an ordinary trial of one accused of defamation under the provisions of R.S. 14:47.

The evil of defamatory utterances is aptly discussed in the Oswald case as follows:

> "With respect to the heart of the libeler, it is more dark and base than that of the assassin, or than his who commits a midnight arson. It is

true, that I may never discover the wretch who has burned my house, or set fire to my barn; but these losses are easily repaired, and bring with them no portion of ignominy or reproach. But the attacks of the libeler admit not of this consolation; the injuries which are done to character and reputation seldom can be cured, and the most innocent man may in a moment be deprived of his good name, upon which, perhaps, he depends for all the prosperity, and all the happiness of his life. To what tribunal can he then resort, how shall he be tried, and by whom shall he be acquitted? It is in vain to object, that those who know him will disregard the slander, since the wide circulation of public prints must render it impracticable to apply the antidote as far as the poison has been extended. Nor can it be fairly said, that the same opportunity is given to vindicate, which has been employed to defame him; for many will read the charge, who may never see the answer; and while the object of accusation is publicly pointed at, the malicious and malignant author, rests in the dishonorable security of an anonymous signature. Where much has been said, something will be believed, and it is one of the many artifices of the libeler, to give to his charges an aspect of general support, by changing and multiplying the style and name of his performances. But shall such things be transacted with impunity in a free country, and among an enlightened people? Let every honest man make this appeal to his heart and understanding, and the answer must be — no!"

Chaplinsky v. State of New Hampshire, 62 S.

Ct. 766, 315 U.S. 568, 86 L.Ed. 1031, involving a prosecution for criminal libel against a citizen who *had publicly called a public official (a city marshal) a "racketeer"* recognized that a state has the right to protect its citizens from injury caused by defamatory utterances. Holding that resort to personal abuse, such as "racketeer," was not in any sense communication of information or opinion safeguarded by the federal constitution and that its punishment as a criminal act raised no question under the Constitution, the court made the following observation:

> "Allowing the broadest scope to the language and purpose of the Fourteenth Amendment, it is well understood that the right of free speech is not absolute at all times and under all circumstances. There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem. These include the lewd and obscene, the profane, the libelous, and the insulting or 'fighting' words—those which by their very utterance inflict injury or tends to incite an immediate breach of the peace. It has been well observed that such utterances are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality. 'Resort to epithets or personal abuse is not in any proper sense communication of information or opinion safeguarded by the Constitution, and its punishment as a criminal act would raise no question

under that instrument.' *Cantwell v. Connecticut*, 310 U.S. 296, 309-310."

The logical conclusion from the *Chaplinsky* decision (supra) is that in prosecutions for criminal libel, involving words which, by their very utterance, inflict injury or tend to an immediate breach of the peace, the test of clear and present danger (either of injury to the individual who is defamed or of breach of the peace) should not be considered. This conclusion was reached by this court in *Beauharnais v. People of Illinois*, 72 S.Ct. 725, 343 U.S. 250, 96 L.Ed. 919, wherein the court stated:

> "Libelous utterances not being within the area of constitutionally protected speech, it is unnecessary, either for us or for the State courts, to consider the issues behind the phrase 'clear and present danger.' Certainly no one would contend that obscene speech, for example, may be punished only upon a showing of such circumstances. Libel, as we have seen, is in the same class."

The Louisiana defamation statute (R.S. 14:47-50) is in accord with the federal jurisprudence on libelous statements, including what constitutes a defamatory utterance, privilege, fair comment on public officials, and the destruction of privilege by excess or by actual malice. *White v. Nicholls*, 44 U.S. 266, 3 Howard 266, 11 L.Ed. 591; *Dorr v. U.S.*, 24 S.Ct. 808, 195 U.S. 138, 49 L.Ed. 128; *Philadelphia v. Quigley*, 62 U.S. 202, 21 Howard 202, 16 L.Ed. 73; *Gandia v. Pettingill*, 32 S.Ct. 127, 222 U.S. 452, 56 L.Ed. 267; *Farmers Education & Coop Union v. W. Day, Inc.*,

79 S.Ct. 1302, 360 U.S. 525, 3 L.Ed. 2d 1407; *Near v. Minnesota*, 283 U.S. 697, 51 S.Ct. 625, 75 L.Ed. 1357.

The State of Louisiana, as its defamation statute (R.S. 14:47-50) and its jurisprudence show has no tolerance whatever for any special claim by judges of immunity from criticism. It is submitted, however, that under the *Chaplinsky* and *Beauharnais* decisions, supra, the first and fourteenth amendments do not deprive the state in a defamation prosecution of its right and duty to preserve the public peace and to protect all members of society, including judges, from the evils of malicious libelous utterances.

CONCLUSION

In conclusion, permit us again respectfully to call your Honors' specific attention to the fact that no evidence of any type, character, or description was offered by this defendant to controvert the positive affirmative proof offered by the State to prove his guilt not only beyond a reasonable doubt but beyond any doubt. (R 565, 620-621.)

To be more specific, defendant made no attempt to avail himself of constitutional rights of due process of law afforded to him in Louisiana Courts in that he made no attempt to prove the truthfulness of any statement which he made; in fact he made no attempt to prove he even had a reasonable ground to believe that the statements he made, if untrue, he believed them to be true; he made absolutely no attempt to show that there was a lack of actual malice or made

any attempt to show a lack of implied malice. (R 565, 620-621.) He did go out of his way through the cross-examination of his counsel in the district court to embarrass some of the judges by trying to drag in a red herring as to their ancestors or their relatives by affinity. In fact, we are indeed surprised that this thinly veiled attempt has been carried over by brief filed herein by the eminent counsel in this case who audaciously shows on page 8 of his brief in a footnote the ancestors and their occupations of one of the judges who long prior to this defendant's admission to the practice of law had departed this life and who had gone to their last reward.

Your Honors will note on pages 496-497, 504 of the transcript that Judge Platt testified as follows under cross-examination:

"Q. Now, Judge, do you consider a lottery operation a racket?

A. Well, no question about it, lotteries are a racket. I'd put them as a racket.

Q. You Consider that a racket?

A. Yes.

Q. Now, have you ever had any close connection with people in the lottery business?

A. No.

Q. Do you know who Mrs. G. W. Platt is?

A. My mother.

(fol. 750) Q. Did she ever have any lottery business?

A. Never; not to my knowledge.

Q. Not to your knowledge?

A. No, sir.

Q. Well, I will hand you what purports to be a bill of sale—photostatic copy of bill of sale from Mrs. G. W. Platt and ask if you deny the fact that that is her signature which appears thereon?

A. I don't know whether I can identify her signature. I haven't seen her signature in fifty years.

Mr. Gremillion: I am going to object to the introduction of any such document like that photostatic copy.

The Court: He hasn't offered. Let him question on it.

A. It could be her signature. It could be my mother's signature, from what I know of it.

Q. This purports to sell the Original Claiborne Lottery, domiciled at 645 North Dorgenois Street to a man named Eugene J. Philastre, dated March 16, 1946, Algiers, Louisiana. Do you have any knowledge whatever of such a transaction?

A. No.

Q. Do you have any knowledge that your mother owned such a lottery?

A. Positively not. My father was in the lottery business before he died.

Q. Your father was?

A. Yes, but he died in 1938.

Q. Is it possible that your mother was?

A. Was what?

Q. In the lottery business?

A. Positively not. My mother died at the age of eighty-one years and she died in 1954.

Q. But your father was in the lottery business?

A. Yes. I didn't know that except by hearsay. I was married and I wasn't living with them. I was married in 1917 and raising my own family in my home."

* * *

"The Witness: While I am up here, I have had one great honor bestowed upon me since I have been a Judge. I brought it along because I'd like to present it to the Court to show what my real reputation is. On January 28, 1954, I was presented with this silver scroll by the New Orleans Bar Association. It states: 'Presented to the Honorable George P. Platt in recognition of distinguished and loyal service on the bench, by the New Orleans Bar Association.' This was after I had been on the bench for thirty-five years."

The whole brief of eminent counsel in this case is in our opinion a lot of legal legerdemain and by ingenious suggestion to have their views prevail in this court despite positive affirmative jurisprudence to the contrary, as they are requesting in their brief, without any legal basis for the suggestion except their own, for your Honors to overrule the *Beauharnais* case. If your Honors were to overrule the *Beauharnais*

case, you would also have to overrule the *Chaplinsky* case.

Eminent counsel is also attempting in our opinion to have this court legislate rather than interpret the constitutionality of Amendment 1, as he would now make the Louisiana Defamation Statutes unconstitutional if the individual defamed also happened to be a district judge, but constitutional as to all other citizens of our State. He would also in our opinion have your Honors believe that a judge as an individual has to be a milquetoast, as the whole theory of his wanting the defamation law held unconstitutional seems to be some nebulous idea that human nature has changed and that people defamed are no longer pugnacious. If this theory is correct, then we respectfully submit that you could not commit a crime by defaming a clergyman of any religion because he would by nature and theological training be averse to physical encounter, whereas it would be a crime to defame men like Cassius Clay, Sonny Liston, Jack Dempsey, or Gene Tunney. This statement is not made facetiously, but is simply intended here to direct your Honors' attention to the fallacies of the brief submitted by eminent counsel.

Every theory in the defendant's brief predates the Beauharnais case and all his historical references have for years been in a state of innocuous desuetude. At the time of the Beauharnais decision, this court was familiar with this historic background. Defendant wants to revert back to the period prior to the Chap-

linsky and Beauharnais decisions and to turn back the clock to the personal vengeance philosophy of "an eye for an eye, a tooth for a tooth", "burning for burning", "wound for wound", Exodus.XXI, instead of the prohibition of the Sermon on the Mount, "Thou shall not bear false witness."

We have adverted to the definitions of contempt, sedition, and defamation, (commonly called libel.) This court has already held that contempt and libel are distinct and separate offenses; even though the same words are used or the same act committed, prosecution may be had on either or both and does not form a basis for former jeopardy. *Jerney v. Mac Craken*, 294 U.S. 125, (1935.)

None of the constitutional rights, state or federal, of this defendant has been interfered with, and he has been given his day in Court. His guilt has been proven beyond a doubt and this appeal should be dismissed at his cost, or, in the alternative, his conviction and sentence should be affirmed at his cost.

Respectfully submitted,

JACK P. F. GREMILLION,
Attorney General,
State of Louisiana,
2201 State Capitol,
Baton Rouge, Louisiana.

M. E. CULLIGAN,
Assistant Attorney General,
State of Louisiana,
104 Supreme Court Bldg.,
301 Loyola Avenue,
New Orleans, Louisiana.

JOHN E. JACKSON, JR.,
Assistant Attorney General,
State of Louisiana,
104 Supreme Court Bldg.,
301 Loyola Avenue,
New Orleans, Louisiana.

CERTIFICATE

I, Michael E. Culligan, a member of the Bar of the United States Supreme Court, hereby certify that this _____day of _____, 1964, a copy of the above and foregoing brief was served on Eberhard P. Deutsch and René H. Himel, Jr., Hibernia Bank Building, New Orleans 12, Louisiana, and Louis P. Trent, 400 Perez Building, 419 Carondelet Street, New Orleans, Louisiana, by depositing same in the United States Mail, postage prepaid.

_____

Of Counsel.

APPENDIX "A"

An Act in addition to the act, entitled, "An Act for the punishment of certain crimes against the United States."

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,* That if any persons shall unlawfully combine or conspire together, with intent to oppose any measure or measures of the government of the United States, which are or shall be directed by proper authority, or to impede the operation of any law of the United States, or to intimidate or prevent any person holding a place or office in or under the government of the United States, from undertaking, performing or executing his trust or duty; and if any person or persons, with intent as aforesaid, shall counsel, advise or attempt to procure any insurrection, riot, unlawful assembly, or combination, whether such conspiracy, threatening, counsel, advice, or attempt shall have the proposed effect or not, he or they shall be deemed guilty of a high misdemeanor, and on conviction, before any court of the United States having jurisdiction thereof, shall be punished by a fine not exceeding five thousand dollars, and by imprisonment during a term not less than six months nor exceeding five years; and further, at the discretion of the court may be holden to find sureties for his good behaviour in such sum, and for such time, as the said court may direct.

SEC. 2. *And be it further enacted,* That if any per-

son shall write, print, utter or publish, or shall cause or procure to be written, printed, uttered or published, or shall knowingly and willingly assist or aid in writing, printing, uttering or publishing any false, scandalous and malicious writing or writings against the government of the United States, or either house of the Congress of the United States, or the President of the United States, with intent to defame the said government, or either house of the said Congress, or the said President, or to bring them, or either of them, into contempt or disrepute; or to excite against them, or either or any of them, the hatred of the good people of the United States, or to stir up sedition within the United States, or to excite any unlawful combinations therein, for opposing or resisting any law of the United States, or any act of the President of the United States, done in pursuance of any such law, or of the powers in him vested by the constitution of the United States, or to resist, oppose, or defeat any such law or act, or to aid, encourage or abet any hostile designs of any foreign nation against the United States, their people or government, then such person, being thereof convicted before any court of the United States having jurisdiction thereof, shall be punished by a fine not exceeding two thousand dollars, and by imprisonment not exceeding two years.

SEC. 3. *And be it further enacted and declared*, That if any person shall be prosecuted under this act, for the writing or publishing any libel aforesaid, it shall be lawful for the defendant, upon the trial of the cause, to give in evidence in his defence, the truth of

the matter contained in the publication charged as a libel. And the jury who shall try the cause, shall have a right to determine the law and the fact, under the direction of the court, as in other cases.

SEC. 4. *And be it further enacted*, That this act shall continue and be in force until the third day of March, one thousand eight hundred and one, and or longer: *Provided*, that the expiration of the act shall not prevent or defeat a prosecution and punishment of any offence against the law, during the time it shall be in force.

APPROVED, JULY 14, 1798.

APPENDIX "B"

LA. CODE OF CIVIL PROCEDURE

SECTION. POWER TO PUNISH FOR CONTEMPT

Art. 221. Kinds of contempt

A contempt of court is any act or omission tending to obstruct or interfere with the orderly administration of justice, or to impair the dignity of the court or respect for its authority.

Contempts of court are of two kinds, direct and constructive.

Source: New; *cf.* Comment following.

Official Revision Comment

This is the uniform classification of contempts of court in America, recognized and applied in State ex rel. DeBuys v. Judges of Civil District Court, 32 La.Ann. 1256 (1880); and Graham v. Jones, 200 La. 137, 7 So.2d 688 (1942). See 17 Tul.L.Rev. 655 (1943), and 38 Minn.Stats.Anno., § 588.01(1).

Art. 222. Direct contempt

A direct contempt of court is one committed in the immediate view and presence of the court and of which it has personal knowledge, or a contumacious failure to comply with a subpoena or summons, proof of service of which appears of record.

Any of the following acts constitutes a direct contempt of court:

(1) Contumacious, insolent, or disorderly behavior toward the judge, or an attorney or other officer of the court, tending to interrupt or interfere with the business of the court, or to impair its dignity or respect for its authority;

(2) Breach of the peace, boisterous conduct, or violent disturbance tending to interrupt or interfere with the business of the court, or to impair its dignity or respect for its authority;

(3) Use of insulting, abusive, or discourteous language by an attorney or other person in open court, or in a pleading, brief, or other document filed with the court in irrelevant criticism of another attorney or of a judge or officer of the court;

(4) Violation of a rule of the court adopted to maintain order and decorum in the court room;

(5) Contumacious failure to comply with a subpoena, proof of service of which appears of record, or refusal to take the oath or affirmation as a witness, or refusal of a witness to answer a non-incriminating question when ordered to do so by the court; and

(6) Contumacious failure to attend court to serve as a juror after being accepted as such, or to attend court as a member of a jury venire, when proof of service of the summons appears of record.

Source: New; cf. Rules of the Supreme Court of Louisiana, Rule X, § 4; 38 Minn.Stats.Anno., § 588.01(1), (2); 29 McKinney's Consol.Laws of N.Y. Anno., Art. 19, § 753.

Official Revision Comments

(a) While this article is patterned to some extent upon the Minnesota law, which is the most complete statute found, it has been broadened appreciably so as to include all applicable and useful provisions of the other indirect sources, and to cover the case discussed in Comment (b).

(b) Under the Minnesota and other statutes on the subject, the definition of direct contempt is not broad enough to cover the case of the contumacious refusal or failure of a witness or juror to attend court when subpoenaed or summoned. Yet the whole theory of the direct contempt is that the judge does not need the introduction of evidence to reach his finding, and certainly these cases fall within this theory. Actually, no proof is needed, as the return on the subpoena or summons is in the record, and there is no reason why these cases should not be considered direct contempts. When a witness refuses to be sworn, or to answer a question, all of this occurs in

the immediate view and presence of the court. For this reason, the first paragraph of this article has been broadened to include them within the definition of direct contempt, and Art. 222(5) and 222(6) expressly make them a direct contempt.

Art. 223. Same; procedure for punishing

A person who has committed a direct contempt of court may be found guilty and punished therefor by the court forthwith, without any trial other than affording him an opportunity to be heard orally by way of defense or mitigation. The court shall render an order reciting the facts constituting the contempt, adjudging the person guilty thereof, and specifying the punishment imposed.

Source: New; *cf.* 38 Minn.Stats.Anno., § 588.03.

Library references: Contempt West 30-69; C.J.S. Contempt §§ 43-89.

Official Revision Comment

This article goes beyond its indirect source provision in affording the person charged with contempt an opportunity to make an oral statement by way of defense or mitigation. This accords with customary judicial practices in Louisiana.

See, also, Comments under Arts. 224, 864, 3611, *infra*.

Art. 224. Constructive contempt

A constructive contempt of court is any contempt other than a direct one.

Any of the following acts constitutes a constructive contempt of court:

(1) Wilful neglect or violation of duty by a clerk, sheriff, or other person elected, appointed, or employed to assist the court in the administration of justice;

(2) Wilful disobedience of any lawful judgment, order, mandate, writ, or process of the court;

(3) Removal or attempted removal of any person or property in the custody of an officer acting under authority of a judgment, order, mandate, writ, or process of the court; attorney;

(4) Deceit or abuse of the process or procedure of the court by a party to an action or proceeding, or by his attorney;

(5) Unlawful detention of a witness, party, or his attorney, while going to, remaining at, or returning from the court where the action or proceeding is to be tried;

(6) Improper conversation by a juror or venireman with a party to an action which is being, or may be, tried by a jury of which the juror is a member, or of which the venireman may be a member, or with any person relative to the merits of such an action; or receipt by a juror or venireman of a communication from any person with reference to such an action, without making an immediate disclosure to the court of the substance thereof;

(7) Assuming to act as a juror, or as an attorney or other officer of the court, without lawful authority;

(8) Comment by a newspaper or other medium for the dissemination of news upon a case or proceeding, then pending and undecided, which constitutes a clear, present, and imminent danger of obstructing or interfering with the orderly administration of justice, by either influencing the court to reach a particular decision, or embarrassing it in the discharge of its judicial duties;

(9) Wilful disobedience by an inferior court, judge, or other officer thereof, of the lawful judgment, order, mandate, writ, or process of an appellate court, rendered in connection with an appeal from a judgment or order of the inferior court, or in connection with a review of such judgment or order under a supervisory writ issued by the appellate court; and

(10) Any other act or omission punishable by law as a contempt of court, or intended to obstruct or interfere with the orderly administration of justice, or to impair the

dignity of the court or respect for its authority, and which is not a direct contempt.

Source: New; *cf.* 38 Minn.Stats.Anno., § 588.01(3); 29 McKinney's Consol. Laws of N.Y., Art. 19, § 753.

Official Revision Comments

(a) See Comment (b) under Art. 222, *supra*.

(b) Art. 224(8) is declaratory of the rule of Graham v. Jones, 220 La. 195, 7 So.2d 695 (1942), and is within the constitutional limitations imposed by Bridges v. State of California, 314 U.S. 252, 62 S.Ct. 190, 86 L.Ed. 193 (1941).

(c) Art. 224(10) is an omnibus provision which includes: (1) all acts or omissions punishable as a contempt of court under special statutes, and which are not direct contempts; and (2) all other intentional acts or omissions which fall within the definition of contempt of court, and which are not direct contempts.

Art. 225. Same; procedure for punishing

Except as otherwise provided by law, a person charged with committing a constructive contempt of court may be found guilty thereof and punished therefor only after the trial by the judge of a rule against him to show cause why he should not be adjudged guilty of contempt, and punished accordingly. The rule to show cause may issue on the court's own motion, or on motion of a party to the action or proceeding, and shall state the facts alleged to constitute the contempt. A certified copy of the motion, and of the rule to show cause, shall be served upon the person charged with contempt in the same manner as a subpoena, at least forty-eight hours before the time assigned for the trial of the rule.

If the person charged with contempt is found guilty, the court shall render an order reciting the facts constituting the contempt, adjudging the person charged with contempt guilty thereof, and specifying the punishment imposed.

Source: New; *cf.* C.P. Art. 132; 38 Minn.Stats.Anno., § 588.01.

Official Revision Comments

(a) The procedure in this article employs a rule to show cause, which may issue on the court's own motion or on the motion of a party, and the motion for the rule to show cause sets forth the facts alleged to constitute the constructive contempt. Further, the person charged with committing the constructive contempt is allowed at least forty-eight hours to prepare his defense.

(b) The language "Except as otherwise provided by law" is necessary to avoid any conflict with the provisions of R.S. 23:848, covering charges of contempt for violating an injunctive order issued in a labor relations case, and providing a completely different procedure, including the right to trial by jury, and the right to recuse the trial judge in certain instances, where a person is charged with an "indirect contempt" which is undefined but means the "constructive contempt" of this article.

Art. 226. Same; imprisonment until performance

When a contempt of court consists of the omission to perform an act which is yet in the power of the person charged with contempt to perform, he may be imprisoned until he performs it, and in such a case this shall be specified in the court's order.

Source: New; *cf.* 38 Minn.Stats.Anno., § 588.12.

Official Revision Comment

This article is necessary in rare cases of civil contempt, so as to permit the court to enforce its order or judgment. It accords with the 1870 Code of Practice Art. 937, but overrules legislatively Haffner v. Judge of First Judicial District, 50 La.Ann. 552, 23 So. 478 (1898).

Art. 227. Punishment for contempt

A person may not be adjudged guilty of a contempt of

court except for misconduct defined as such, or made punishable as such, expressly by law.

The punishment which a court may impose upon a person adjudged guilty of contempt of court is provided in R.S. 13:4611.

Source: New.

Official Revision Comment

This article implements the provisions of Const. Art. XIX, § 17, providing that, "The power of the courts to punish for contempt shall be limited by law." This article limits such power to two classes of cases, both of which must be provided expressly by law: (1) misconduct defined as such by a code or statutory provision; and (2) misconduct which a code or statutory section provides is punishable as a contempt. The numerous statutes of Louisiana fall into both categories.

TITLE 13, LA. REVISED STATUTES OF 1950

§ 4611. Punishment for contempt of court

Except as otherwise provided by law:

(A) The supreme court, the courts of appeal, the district courts, and the city courts may punish a person adjudged guilty of a contempt of court therein, as follows:

(1) For a direct contempt of court committed by an attorney at law, by a fine of not more than one hundred dollars, or by imprisonment for not more than twenty-four hours, or both; and, for any subsequent contempt of the same court by the same offender, by a fine of not more than two hundred dollars, or by imprisonment for not more than ten days, or both;

(2) For disobeying or resisting a lawful restraining order, or preliminary or permanent injunction, by a fine of not more than one thousand dollars, or by imprisonment for not more than twelve months, or both;

(3) For a deliberate refusal to perform an act which is

yet within the power of the offender to perform, by imprisonment until he performs the act; and

(4) For any other contempt of court, by a fine of not more than two hundred and fifty dollars, or imprisonment for not more than thirty days, or both.

(B) Justices of the peace may punish a person adjudged guilty of a direct contempt of court by a fine of not more than ten dollars, or imprisonment in the parish jail for not more than twenty-four hours, or both. Added Acts 1960, No. 32, § 6.

LA. CODE OF CRIMINAL PROCEDURE
(R.S. 15:11, 12)

§ 11. Inherent power and authority of courts

Every court has the inherent power to enforce the orders which it has power to render, and it is the inherent duty of every judge to see that the proceedings in the court in which he presides shall be carried on decently, with dignity and in an orderly manner; hence every court has authority to issue such writs and orders as may be necessary or proper in aid of the jurisdiction conferred upon it, and to punish, as being a contempt, every interference with or disobedience of its process or orders, as well as every act interrupting or tending to interrupt its proceedings, or impairing the respect due to its authority. Failure to appear for arraignment or trial on the day fixed therefor, after notice, shall be considered a contempt of the court's authority; provided that no one shall be punished for any contempt committed outside of the presence or hearing of the court, except after hearing upon a rule to show cause why he should not be punished for such contempt, served upon him at least twenty-four hours before such hearing.

§ 12. Power of court to punish for contempt

Justices of the peace and judges of municipal courts shall have power to punish each contempt of their authority by a fine of not more than ten dollars, or by an imprisonment of not more than three days, or both; judges of all other courts shall have power to punish each contempt of their

authority by a fine of not more than one hundred dollars or by imprisonment of not more than ten days, or both.

Constitutional Provisions. Const. 1921, art. 19, § 17 provides that the power of the courts to punish for contempt shall be limited by law.

Office-Supreme Court, U.S.
FILED
APR 6 1964
JOHN F. DAVIS, CLERK

Supreme Court of the United States

OCTOBER TERM, 1963

No. 4

JIM GARRISON,

Appellant

versus

STATE OF LOUISIANA,

Appellee

On Appeal from the Supreme Court of Louisiana

SUPPLEMENTAL BRIEF FOR APPELLANT

Eberhard P. Deutsch,
Hibernia Bank Building,
New Orleans,
Attorney for Appellant.

Deutsch, Kerrigan & Stiles,
René H. Himel, Jr.,
Louis P. Trent,
Of Counsel.

Supreme Court of the United States

OCTOBER TERM, 1963

No. 400

JIM GARRISON,

Appellant

versus

STATE OF LOUISIANA,

Appellee

SUPPLEMENTAL BRIEF FOR APPELLANT

In its opinion rendered on March 9, in *New York Times Co. vs Sullivan,* this Court held that the First and Fourteenth Amendments require "a federal rule that prohibits a public official from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with 'actual malice'—that is, with knowledge that it was false or with reckless disregard of whether it was false or not".

Most of the issues in the case at bar have now been determined in this Court's opinion in the *New York Times* case. Thus, it was held in that opinion, that this Court's prior statements (in *Beauharnais vs Illinois*

and other cases) "to the effect that the Constitution does not protect libelous publications", do not foreclose inquiry into cases which might involve "the use of libel laws to impose sanctions upon expressions critical of the official conduct of public officials", and that, like "the various other formulae for the repression of expression that have been challenged in this Court, libel can claim no talismanic immunity from constitutional limitations", but must also "be measured by standards that satisfy the First Amendment".

Similarly, this Court has now held, in its opinion in the *Times* case, that "authoritative interpretations of the First Amendment guarantees have consistently refused to recognize an exception for any test of truth, whether administered by judges, juries or administrative officials . . . that erroneous statement is inevitable in free debate", and that, accordingly, a "state rule of law is not saved by its allowance of the defense of truth".

In the same vein, the Court also held in the *Times* case, that "just as factual error affords no warrant for repressing speech that would otherwise be free, the same is true of injury to official reputation"; and criticism of "official conduct (of government officers) does not lose its constitutional protection merely because it is effective criticism and hence diminishes their official reputations".

The Court expressly re-affirmed its prior holdings that this rule is especially applicable to judges, who "are to be treated as 'men of fortitude, able to thrive

in a hardy climate' ", in its holding "that concern for the dignity and reputation of the courts does not justify the punishment as criminal contempt of criticism of the judge . . . . even though the utterance contains 'half-truths' and 'misinformation' ", since "such repression can be justified, if at all, only by a clear and present danger of the obstruction of justice".

Finally, this Court held also, in the *New York Times* case, that while the question as to the constitutionality of the Sedition Act of 1798 (which prescribed punishment for "false, scandalous and malicious" criticism of government officers) was never brought before this Court, "the attack upon its validity has carried the day in the court of history" which reflects "a broad consensus that the Act, because of the restraint it imposed upon criticism of government and public officials, was inconsistent with the First Amendment"--now equally as applicable to state as to federal laws.

It remains only to add a brief comment as to the Court's holding that damages may be awarded for a defamatory statement regarding a government officer's official conduct only on proof that the statement was made with actual malice--with knowledge that it was false, or with reckless disregard of whether it was false or not.

It seems obvious from its opinion in the *New York Times* case, that this Court did not mean to retrogress by enunciating the actual-malice rule as a substitute for the stricter clear-and-present-danger test in criminal prosecutions for communication of ideas, although

logic may now require that the actual-malice rule be added to the requirements of proof of clear and present danger, and of trial by jury, as an additional safeguard in criminal libel cases.

If no clear and present danger appears as to an interest which the State may legitimately protect by suppressing speech, there is no more constitutional basis for deprivation by the State, of the benefit of speech on the ground that it may have been malicious, than on the ground that it may have been false.[1] Appellant's original brief demonstrates (pages 43-47) that the danger of permitting punishment of unpopular speech is just as great under the guise of punishing improper motives, as under the guise of punishing factual error.

This Court reversed the contempt conviction in *Pennekamp vs Florida*, 328 US 331, 345 (1946), on the ground that no clear and present danger had been shown, despite its acceptance *arguendo* of the State Courts' findings "that the truth was willfully or wantonly or recklessly withheld from the public or that the motive behind the publication was to abase and destroy the efficiency of the courts"; and in none of this Court's decisions in criminal cases, invalidating breach-of-the-peace or other convictions on clear-and-present-danger grounds, has it given any consideration to malice as a determinative factor.

[1] "The people of this nation have ordained in the light of history, that, in spite of the probability of excesses and abuses, these (First Amendment) liberties are, in the long view, essential to enlightened opinion and right conduct on the part of the citizens of a democracy." *Cantwell vs Connecticut*, 310 US 296, 310 (1940).

At all events, while the State of Louisiana undertook to establish malice in the case at bar, and the trial court found malice, there was neither proof nor finding of "actual malice" in the sense of knowing falsity or reckless disregard for the truth.

The court's finding of malice, based exclusively on "statements made (by appellant) upon other occasions". (R 628), was nothing more than a finding of animosity on his part toward the Judges. The trial court expressly attributed appellant's "malice" to "either anger, provocation, ill feeling, spite or enmity, by the requirement of the judges in requiring the five signatures for the approval of his motions for expenditures" (R 631).[2]

In fact, the trial court's own finding in this regard was phrased in terms of inference rather than of proof: "After considering all of the evidence in this case, I can only conclude that the Defendant could not have reasonably had any honest or reasonable belief as to the truth of this statement. It is inconceivable to me that the Defendant could have had a reasonable belief, which could be defined as an honest belief, that not one but all eight of these Judges of the Criminal District Court were guilty of what he charged them with in the defamatory statement" (R 632).

This Court will itself always "make an independent examination of the whole record", and will itself

[2] The trial judge had himself held (R 622) "that the District Attorney could be provoked by the establishment of such a rule, as the statute did not require five of the Judges to sign the order . . . I do not believe that the Legislature contemplated this . . . The Act only provides that it is necessary to have the signature of one judge."

examine "the statements in issue and the circumstances under which they were made", in order to determine "whether they are of a character which the principles of the First Amendment, as adopted by the Due Process Clause of the Fourteenth Amendment, protect", and will itself too, "in proper cases review the evidence to make certain that those principles have been constitutionally applied". *New York Times Co. vs Sullivan.*

So far from showing "actual malice" on the part of appellant, in the sense of knowledge of the falsity of his statement or reckless disregard as to whether it was false; the evidence, as the following brief discussion thereof demonstrates, shows even an absence of personal animosity on his part toward the Judges.

Some hundred pages of the transcript (R 196-282) cover the portion of the record of the trial devoted to evidence of, and with reference to, statements by, appellant, admitted by the trial judge over objection, as bearing on appellant's "malice" at the time of the utterance in issue. Much of this evidence dealt with appellant's vocal efforts directed toward bringing to public attention, the crowded condition of the court's criminal docket, attributed by appellant to the Judges' neglect of duty and excessive vacations.[3]

[3] It was shown that one of the judges had tried no cases at all for some years (R 225, 239); that none of the judges ordinarily tried cases after noon (R 206, 226, 239); that one of the judges did not (R 225, 228), and in fact refused to (R 240 et seq.), hold court on Fridays; and that, in an address delivered at a church a month after making the statement in issue, appellant had said: "I pointed out that these holidays on Fridays, which has been the custom, just can't continue with the Parish Prison crowded as it is. The two and one-half months vacation(s) are not reasonable. . . . The summer vacation of two and one-half months originated

One reporter, for instance, quoted appellant as having "said that the Judges should be investigated too for taking 206 days of vacation a year before the legal holidays . . . that for every trial date, I believe, there were two vacation dates . . . he called it a racket . . .", and insisted "'that the only way to get these sacred cows back to work is by public reaction'" (R 277-278).[4]

In one especially interesting instance, a statement made by appellant to a reporter more than two months before the assertedly defamatory one at issue, was sought to be introduced in evidence by the prosecution. The trial judge overruled a defense objection, and ruled that "for the purpose of showing malice and for that purpose alone, the Court will allow it to go in" (R 231). But then, when the statement (R 233) was read, it disclosed no malice whatever on appellant's part, whereupon the trial judge reversed himself:

> "At this time, the Court will not permit it to be made a part of the record for the reason that the Court is allowing these statements made upon other occasions, both before and after the alleged defamatory statements, for the sole purpose of showing malice. The state-

---

in 1921 because the courtrooms were so hot without the appliances we have today but now they have air-conditioning in the courtrooms but, unfortunately, the courtrooms are empty and the Parish Prison is jammed all summer long where it is hot. I feel I would not be doing my duty if I did not point it out in positive terms. Whether it is good taste or not is irrelevant. The point is that the Parish Prison is crowded and they have too many holidays" (R 254).

[4] This witness even stated that appellant "certainly didn't give me the appearance that he was being vindictive" and agreed "that at no time did Mr. Garrison show any personal animosity toward the judges" (R 278).

> ment offered does not show a malicious intent, but rather an intent of co-operation ." (R 234).[5]

In another instance, when a reporter, appearing for the prosecution, was permitted, over defense objection, to repeat something which appellant had said more than two months after having made the statement in issue, the witness testified that

> ". . . he said that a number of my lawyer friends told me that what I said about the judges was true but that I shouldn't have said it. He also said that if he were to make the criticisms that were involved in the charges against him, over again, he might word them differently, but he didn't know what wording would be better. He also said that, whatever the outcome was, he would never apologize for telling the people of New Orleans the truth . . ." (R 271).

Thereupon the prosecution announced that the "State is taken by surprise", and sought to cross-examine its witness as to portions of his testimony, but the Court ruled: "He has testified to that. Mr. Grémillion, you couldn't be caught by surprise": and the testimony was permitted to stand (R 271).

In still another instance, a reporter testifying as a prosecution witness, was asked on cross-examination,

[5] After considerable colloquy, the statement was placed in the record by agreement (R 235).

whether he had not, "many, many times", heard one of the judges "use very vituperative language about the District Attorney", to which the witness replied (R 244):

> "Yes, sir, and by the same token I have sat in Mr. Garrison's office and heard him blast the judges, so it is a sort of a tie, it's a stand-off."[6]

* * * * *

> "Q. During the course of these exchanges, then one day the District Attorney was charged?
> "A. Yes, sir."

In the last analysis, the absence of any such "actual malice" on appellant's part, as this Court said in the *Times* case might conceivably have deprived such a statement of its constitutional protection in a civil action, must really be clear from the trial judge's own final conclusion, in the imposition of sentence, "that the defamatory statement might not have been issued without some provocation" (R 638).

It is respectfully submitted that the points made in appellant's original brief herein, many of which have now been adopted in this Court's opinion in *New York*

[6] The bill of information itself, filed by the Attorney General to charge appellant with defamation in the case at bar, quotes the newspaper article of which complaint is made as giving "the statement by District Attorney Jim Garrison on his feud with the criminal district court judges" (R 27).

Times Co. vs Sullivan, impel reversal of the judgment of the Supreme Court of Louisiana in the case at bar.

Eberhard P. Deutsch,
Attorney for Appellant

Deutsch, Kerrigan & Stiles,
René H. Himel, Jr.,
Louis P. Trent,
Of Counsel.

April, 1964.

SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
APR 16 1964
JOHN F. DAVIS, CLERK

No. [redacted] 4

In the Supreme Court of the United States

OCTOBER TERM, 1963

JIM GARRISON,

Appellant,

v.

STATE OF LOUISIANA,

Appellee.

On Appeal from the Supreme Court of Louisiana

SUPPLEMENTAL BRIEF FOR APPELLEE

JACK P. F. GREMILLION,
Attorney General,
State of Louisiana,
2201 State Capitol,
Baton Rouge, Louisiana.

M. E. CULLIGAN,
Assistant Attorney General,
State of Louisiana,
104 Supreme Court Bldg.,
301 Loyola Avenue,
New Orleans, Louisiana.

JOHN E. JACKSON, JR.,
Assistant Attorney General,
State of Louisiana,
104 Supreme Court Bldg.,
301 Loyola Avenue,
New Orleans, Louisiana.

No. 400

In the
Supreme Court of the United States

OCTOBER TERM, 1963

JIM GARRISON,

Appellant,

v.

STATE OF LOUISIANA,

Appellee.

On Appeal from the Supreme Court of Louisiana

SUPPLEMENTAL BRIEF FOR APPELLEE

In *New York Times Company, et al. v. Sullivan*, Numbers 39 and 40 of the October Term, 1963, decided March 9, 1964, this court held that a public official is prohibited from recovering damages "for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with 'actual malice'—that is, with knowledge that it was false or with reckless disregard of whether it was false or not."

This case (hereinafter referred to as "the Sullivan case") also holds that there is no absolute privilege for the criticism of public officials; that while the First and Fourteenth Amendments require such criticism to be privileged, the privilege is qualified to this extent: Any official claiming to be defamed by

the communication has a remedy if he can prove actual malice.

The Sullivan case further holds that neither factual error nor defamatory content suffices to remove the constitutional shield from criticism of official conduct, but that actual malice does.

The Sullivan case further holds that the proof presented to show actual malice on the part of the defendants could not constitutionally sustain the judgment against them. The individual defendants had denied that they had authorized the use of their names on the advertisement in question, and "there was *no evidence whatever* that they were aware of any erroneous statements or were in any way reckless in that regard." The court further held that the record tended to show that the facts alleged in the advertisement *were substantially correct* and that the opinion of the representative of the New York Times that the facts were substantially correct when he authorized publication was a reasonable one and "there was no evidence to impeach the witness' good faith in holding it." The court further held that the record failed to show that the guilty knowledge required for actual malice had been brought home to the persons in the Times organization having responsibility for the publication of the advertisement.

This court, in the Sullivan case, further held that the evidence presented was constitutionally defective in another respect: "It was incapable of supporting the jury's finding that the allegedly libelous statements were made 'of and concerning respondent . . .

there was no reference to respondent in the advertisement either by name or official position . . . this reliance on the bare fact of respondent's official position" would transmute "criticism of government however impersonal it may seem on its face into personal criticism, and hence potential libel, of the officials of whom the government is composed . . . we hold that such a proposition may not constitutionally be utilized to establish that *an otherwise impersonal attack on governmental operations* was a libel of an official responsible for those operations." (Emphasis supplied.)

In the trial of the Sullivan case, the Alabama state trial judge had submitted the case to the jury under the instructions that the statements in the advertisement were libelous per se and were *not privileged*. The jury was instructed that because the statements were libelous per se, injury, falsity, and malice are presumed. The Supreme Court of Alabama sustained the trial judge's rulings in all respects. In reversing the Alabama decision, this court held that the rule of law applied by the Alabama courts is constitutionally deficient *because malice was presumed*. Under Alabama law, the defendant had no defense other than to prove that all of the statements were true in all their particulars, *his privilege of fair comment depending upon the proof of truth*. His good motives and a belief in the truth did not negate the presumption of malice under Alabama law. The United States Supreme Court was thus presented with the question of whether criticism of official conduct forfeits its constitutional protection because of the falsity of some of

its factual statements and because of its alleged defamation of the official criticized.

As pointed out above, this court held that the defense of truth did not allow a sufficient safeguard under the constitution for criticism of official conduct; that such criticism was constitutionally privileged, and that actual malice must be proved in order to destroy the privilege.

In its opinion, the court points out that this is not a new rule of law and quotes with approval from a 1908 Kansas case which sets forth the identical rule. This court further points out in its opinion that this ruling has already been adopted by a number of state courts.

The Louisiana Criminal Defamation Statute is in complete accord with the rationale of the Sullivan case. R.S. 14:49 provides in part as follows:

> "A qualified privilege exists and actual malice must be proved regardless of whether the publication is true or false in the following situations:
>
> . . .
>
> (2) Where the publication or expression is a comment made in the reasonable belief of its truth, upon,
>
> (a) The conduct of a person in respect to public affairs. . . ."

Under the Criminal Defamation Statute of Louisiana, as the above excerpt from R.S. 14:49 shows, a qualified privilege exists for criticism of public officials, and actual malice must be proved in order to

convict *regardless of whether the publication is true or false.* The Louisiana Criminal Defamation Statute allows the "defense for erroneous statements honestly made" which the Sullivan case held to be essential to constitutionality. See *Louisiana v. Webster*, 159 So. 2d 140, discussed on pages 27-28 of appellee's original brief herein.[1]

While the Louisiana Defamation Statute is entirely in accord with the rationale of the Sullivan case, the facts of the instant case are distinguishable from the facts of the Sullivan case in two important respects.

First, the advertisement in the Sullivan case made no attack of a personal character upon any individual. It did not refer to the respondent, either by name or official position. Respondent's witnesses did not suggest any basis for the belief that respondent himself was attacked in the advertisement beyond the bare fact that he was in charge of the police department and thus bore official responsibility for police conduct, and beyond the unsupported assumption that because of his official position, he must have been responsible. It was conceded by respondent that the alleged defamatory advertisement related solely to his official conduct, and did not charge him personally with anything. (See Footnote 23 of majority opinion.)

In the case at bar the appellant's statement that every one of the eight Criminal Court judges was in-

[1]The Sedition Act of 1798 did not provide a privilege for criticism of official conduct and allowed only truth as a defense. For this reason, this court's opinion as to its constitutionality has no application to the case at bar.

fluenced by racketeers related to the private conduct and private reputations of the persons defamed, and charged them personally.

Although some of the appellant's statement related to the official conduct of the defamed individuals, the accusation of racketeer influence went beyond criticism of official conduct and attacked the worth of the persons who were judges as individuals and attacked their personal reputations. The majority opinion in the Sullivan case recognizes that the privilege of criticism of official conduct does not extend to personal attacks imputing moral turpitude. The concurring opinion of Mr. Justice Goldberg also recognizes this principle when it states that "this is not to say that the constitution protects defamatory statements directed against the private conduct of a public official or private citizen . . . purely private defamation has little to do with the political ends of a self governing society . . . in most cases, as in the case at bar, there will be little difficulty in distinguishing defamatory speech relating to private conduct from that related to official conduct. I recognize, of course, that there will be a gray area."

Edward Livingston's comment, quoted on page 19 of appellee's original brief is apropos. As stated by Livingston, defendant in the case at bar made "animadversions on public proceedings . . . the vehicle for injury to private character."

In his supplemental brief, page 6, appellant claims that his "vocal efforts" were "directed toward

bringing to public attention, the crowded condition of the court's criminal docket, attributed by appellant to the Judges' neglect of duty and excessive vacations." In reality appellant used such vocal efforts as a subterfuge for a vengeful attack on the private character of the judges with whom he was feuding, when he added to such "vocal efforts" his accusation of racketeer influence.

Second, the Sullivan case is to be distinguished from the case at bar in that there was absolutely no proof of actual malice in the record in the Sullivan case. The opinion in the Sullivan case equates actual malice with "knowledge that the statement was false or with reckless disregard of whether it was false or not."[1]

In the case at bar the record substantiates the Louisiana courts' finding of actual malice.

An examination of the record demonstrates that this appellant became provoked because the judges had the audacity to disagree with him as to the necessity for accounting for certain expenditures from the Fine and Forfeitures Fund either from a legal or a policy standpoint. He made no attempt to handle this controversy through the channels provided by law but decided to seek revenge by attacking the character of these individuals. His first public attack on the personal character of the judges was made on November 2,

[1]It is interesting to note that in his application for rehearing before the Louisiana Supreme Court, appellant argued that it was "indefensible" to treat knowledge of falsity or a reckless disregard of whether it was false or not as equivalent to actual malice. (R 185)

1962 in response to a statement made by retired judge, William J. O'Hara, in which attack appellant included all eight individuals, going into their motivation as being influenced by racketeers.

With the knowledge that his statement was false, or with a reckless disregard as to whether it was false or not, appellant made the statement that racketeer influences on every one of the eight Criminal Court judges caused them to block his vice investigations by cutting off funds from the Fines and Forfeitures Fund. Appellant knew what he said was a falsehood but he deliberately set out to injure the reputations of every one of the eight individuals who were Criminal Court judges because he was frustrated by the five-out-of-eight rule and was provoked by feelings of ill will toward certain individual members of the Criminal Court bench.

The record demonstrates appellant's guilty knowledge of the falsity of his statement, his feelings of ill will, and his wanton desire to injure the victims of his hate campaign, all of which support the finding of actual malice, as follows:

In his successful campaign for District Attorney, appellant had criticized the system of accounting used by the previous district attorney for expenditures from the Fines and Forfeiture Fund, (hereinafter called "the fund") and he knew that the system used in the previous administration, which he had defeated, was not going to continue. R. 424-426.

On August 20, 1962, appellant knew that the

judges were desirous of changing the old system and setting up a better system of accounting by his office for expenditures from the fund. R. 233. Appellant himself stated, "The judges want to set up a system, and I think they are right." R. 233.

On September 10, 1962, Judge Wimberly approved an expenditure from the fund for a rug upon appellant's false representation to him that retired Judge O'Hara had not previously refused to approve the expenditure but had merely forgotten to approve it before leaving town on vacation. As a matter of fact, Judge O'Hara had refused to approve the expenditure because no proof of its value was furnished and appellant never provided the proof required by Judge O'Hara. R. 317-318; R. 349-350.

Prior to October, 1962, expenditures from the fund for vice investigations by appellant's office had been approved by individual judges; R. 478, 481, 482, 483, 510, and 515.

After the misstatement by appellant to Judge Wimberly about retired Judge O'Hara's approval, the judges decided to require a more stringent form of accounting for expenditures from the fund. Retired Judge O'Hara told appellant why certain of his expenditures had not been approved; that he considered certain of his expenditures extravagant and that there was insufficient proof as to their value. R. 316-317. However, appellant did not say anything to retired Judge O'Hara about his vice investigations or the operations of his office being hampered by the failure

to approve his expenditures. This is what Judge O'Hara testified:

> "When Mr. Garrison came into my office to ask me if I wouldn't please change my attitude toward the carpets, he did not say anything to me about his operations being hampered. I didn't hear a word from the District Attorney's office at that time and I didn't hear anything until later that they were using the money and later than that Mr. Garrison attempted to juxtapose two things that had no connection whatsoever. One of those things was the deferment of my approval and the other thing was vice. There was no connection between those things whatsoever. It came a long time later and the statement that there was such a connection is an absolute falsity." R. 333

On October 4, 1962, the eight Criminal Court judges, in an en banc meeting, adopted the rule that five of the eight judges would be required to approve an expenditure from the fund. R. 416, 488. The reason that the judges had for disapproving appellant's expenditures from the fund was that he had furnished them with no supporting proof to show where the money had gone and that they considered certain of the expenditures improper. The judges did not limit their disapproval of appellant's expenditures to those for vice expenditures, for certain expenditures relating to matters other than undercover work for vice investigations were disapproved for lack of proper accounting. The reason for the five man rule was to require a better system of accounting for expenditures from the fund and to prevent the playing off of one judge against the other, as in the instance of appel-

lant's misrepresentation to Judge Wimberly about Judge O'Hara's approval of the rug expenditure. *Appellant was present at the en banc meeting and was informed of the reason for the adoption of the five man rule.* R. 351-353, 391, 416-419, 422, 488, 492, 506, 511, 512, 513-514. At the en banc meeting appellant contended that he had absolute discretion to use the fund in any manner that he saw fit. R. 376. He argued that he felt that the judges had no discretion as to his expenditures from the fund, but later, at the meeting, he conceded that they did have discretion to approve or disapprove his expenditures. R. 517-518, 522. At the same en banc meeting there was some unpleasantness between the appellant and Judge Cocke. R. 518. When Judge Cocke asked appellant for proof that he had borrowed money to pay for expenditures which had not yet been approved, appellant replied that Judge Cocke should consult a psychiatrist. R. 530.

Judge Brahney testified that he did not approve of expenditures totaling $859.00 for undercover work because appellant's office never gave him an account as to when, where, and how the money was spent, although he requested the information from appellant on *three different occasions.* R. 514-516.

On the morning of November 2, 1962, defendant made the statement to the New Orleans Press which is subject of this proceeding, accusing the judges of cutting off his operating funds in order to block his vice investigations because they were influenced by racketeers.

Later, on the same day, November 2, 1962, appellant, in a television interview, stated to Bill Reed of W.W.L.T.V. that a statement made by the judges was a lie. R. 277. In the same interview, he also stated it would have been a waste of time to meet with the judges to discuss their differences and that:

> "The only way to get these sacred cows back to work is by public reaction."[1]

He also stated in the same interview that the judges should be investigated for taking 206 days of vacation; that it was outrageous for them to receive a salary of $18,000.00 per year and that the only way to refer to it was as a "racket." R. 277-278.

About November the 10th, 1962, appellant upon being questioned by the press as to his being charged with public defamation replied that "someone is trying to get me out of office." R. 281.

Between May 7, 1962 and September 10, 1962, the individual judges had approved 73 motions of appellant for expenditures from the fund, totaling $19,284.56. On October 26, 1962, the five man rule as to expenditures was in effect and the judges, en banc, approved 80 items of expenditures from the fund totaling $10,276.00. Between October 26, 1962 and the date of appellant's trial in January, 1963, the judges, en banc, approved 32 motions of expenditures from the fund totaling $17,742.00, or a grand total, from the date appellant took office in May of 1962, of $47,-

---

[1] A "sacred cow", according to Webster's (Second) International Dictionary, unabridged, is: "A person or thing regarded as sacrosanct and immune from violation, attack, criticism, or the like." Jocose.

303.23. R. 376, 384, 385, 515. In addition to the expenditures which had been authorized, appellant had 12 policemen, of his own choice, who were paid by the City of New Orleans but were assigned to his office to be used by him in his investigations. R. 555-556. Appellant made no request for any additional policemen. R. 560. In view of the large amount of expenditures approved by the judges, and in view of the assistanee he was receiving from the police assigned to him, appellant knew that the operations of his office had not been blocked merely because more stringent accounting requirements had been set by the judges.

On November 9, 1962, appellant stated to a Times-Picayune reporter that he had threatened to take racketeering influences of the judges to the Grand Jury. R. 217-218. He told the same thing to a New Orleans States-Item reporter. R. 236, 238. When the reporter asked him what he meant by "racketeering influences", he replied:

> "that he didn't mean that the judges themselves were tied up with racketeers or that the racketeers influenced them in their conduct of their office, but rather that—using the example of a person who might be a friend of a Deputy Sheriff, who might be a friend of a court attache, who then might get a favor from the Court, and that he could be explained as racketeering influence, although it is very indirect and very far afield."

R. 238. (This explanation by itself shows that appellant had a reckless disregard as to the truth or falsity of his accusation that the judges blocked his vice in-

vestigations because they were influenced by racketeers.)

The same States-Item reporter testified that there was a running fight or a "pretty good fight going" between appellant and the defamed judges and that he had sat in appellant's office and had heard him "blast" the judges. R. 244.

On December 5, 1962, in a speech before the congregation of St. Anthony's Catholic Church, appellant told the audience that the judges had sent messages to him that he would get no more money when he began closing joints for B-drinking operations. He said that the judges stopped his vice investigations. He repeated his charge of racketeer influences on the judges. He stated that no other question could arise but racketeer influences when the judges cut off his funds. He stated that the judges tried to prevent him from doing his duty. He stated that the judges never questioned his expenditures until the first B-drinking joint began to cave in and that the reason for questioning his expenditures was that he was fighting vice. He repeated that it was true that questions of influence were used. He stated:

> "This concern by the judges of the expenditures had never before been questioned in the slightest degree until the first B-drinking joint began to cave in. *I don't care what reasons they give* . . . it is true that questions of influence were used . . . I have no allies because the other officials are the association of armed robbers . . . *I don't care* how much these people try to conceal the

> facts with half-truths and downright lies . . . *I don't care* if the judges wear black robes or purple robes or a crown . . . I will not let any judge block me in any way." R. 252-259.

(The court's attention is called to the appellant's frequent use of the words "I don't care". This speech convicts appellant of a reckless disregard of whether his statement of racketeer influence was false or not.)

On December 4, 1962, appellant told a States-Item reporter that he had been irritated by a letter that he had received from the judges concerning his expenditures and criticizing the way that he had handed out money from the fund. R. 264. He also told this same reporter that in October, 1962, the judges had told him that they would not approve expenditures from the fund to reimburse him for his bank loan, and that when it became apparent he was not going to get his money, he decided to carry it to the public. R. 266.

On January 12, 1963, at a talk before a luncheon club at the Monteleone Hotel, which was reported in the New Orleans press, appellant said that there were some good judges in the Criminal District Court and singled out, as a "good judge", Judge Shirley Wimberly, one of the judges whom he had defamed in November. R. 271. He further stated in the luncheon speech that the judges were under the leadership of the "incredible Judge Bernard Cocke". R. 271.

Later, on the same day, January 12, 1963, at a Press Club meeting before 150 to 200 people, appellant repeated the charge that all eight of the Criminal

Court judges were influenced by racketeers and that this was the reason that they had cut off his operating funds at a crucial moment in his French Quarter investigation. R. 248. At the same meeting appellant predicted that he would be convicted of defamation by the Lower Court but that his conviction would be reversed by the highest court in the land. R. 249.

After making the statement of November 2nd, 1962, which is the subject of this proceeding, appellant told Judge Schulingkamp, one of the defamed individuals, that he did not then, nor did he ever think or believe, that Judge Schulingkamp was under the influence of racketeers. R. 383.

On January 19, 1963, appellant stated in a television interview that if he had it to do over again, he would make the same statement. R. 220.

None of the above evidence was rebutted by appellant. He introduced absolutely no evidence. All of the above evidence stands uncontradicted, although prior to the trial, in answer to appellant's motion for a bill of particulars, the state informed appellant that it would prove not only implied malice but also actual malice.

In his supplemental brief appellant has argued that a criminal libel prosecution requires greater safeguards for constitutional validity than a civil libel action; he suggests that in a criminal libel prosecution, this court should add "proof of clear-and-present-danger" to the Sullivan case's requirement of actual malice.

Appellant's argument is illogical for, as this court stated, in the Sullivan case, "The test is not the form in which state power has been applied, but, whatever the form, whether such power has in fact been exercised."

Therefore, whether state power to limit speech is exercised in the form of a civil libel action and the awarding of civil damages, or in the form of a criminal prosecution and the imposition of a fine, as in the case at bar, the constitutional principles to be applied are the same. The privileges of fair comment, subject only to proof of actual malice, affords the same safeguard required by the First and Fourteenth Amendments in both criminal and civil libel actions.

Furthermore, appellant's argument that criminal libel requires greater safeguards for constitutional application than civil libel is refuted by this court's language in the Sullivan case, as follows:

> "What a State may not constitutionally bring about by means of a criminal statute is likewise beyond the reach of its civil law of libel. The fear of damage awards under a rule such as that invoked by the Alabama courts here may be markedly more inhibiting than the fear of prosecution under a criminal statute. See *City of Chicago v. Tribune Co.*, 307 Ill. 596, 607, 139 N.E. 86, 90 (1923). Alabama, for example, has a criminal libel law which subjects to prosecution 'any person who speaks, writes, or prints of and concerning another any accusation falsely and

---

[11] Cf. *Farmers Union v. WDAY*, 360 U.S. 525, 535.

maliciously importing the commission by such person of a felony, or any other indictable offense involving moral turpitude,' and which allows as punishment upon conviction a fine not exceeding $500 and a prison sentence of six months. Alabama Code, Tit. 14, § 350. *Presumably a person charged with violation of this statute enjoys ordinary criminal-law safeguards such as the requirements of an indictment and of proof beyond a reasonable doubt. These safeguards are not available to the defendant in a civil action. The judgment awarded in this case—without the need for any proof of actual pecuniary loss—was one thousand times greater than the maximum fine provided by the Alabama criminal statute, and one hundred times greater than that provided by the Sedition Act. And since there is no double-jeopardy limitation applicable to civil lawsuits, this is not the only judgment that may be awarded against petitioners for the same publication.*" Whether or not a newspaper can survive a succession of such judgments, the pall of fear and timidity imposed upon those who would give voice to public criticism is an atmosphere in which the First Amendment freedoms cannot survive. Plainly the Alabama law of civil libel is 'a form of regulation that creates hazards to protected freedoms markedly greater than those that attend reliance upon the criminal law.' *Bantam Books,*

" 'The Times states that four other libel suits based on the advertisement have been filed against it by others who have served as Montgomery City Commissioners and by the Governor of Alabama; that another $500,000 verdict has been awarded in the only one of these cases that has yet gone to trial; and that the damages sought in the other three total $2,000,000."

Inc. v. Sullivan, 372 U.S. 58, 70." (Emphasis supplied.)

CONCLUSION

The Louisiana Defamation Statute is in complete accord with the rationale of *New York Times v. Sullivan* in that it allows a defense for erroneous statements honestly made about public officials, and it provides a qualified privilege for criticism of official conduct which can only be destroyed by proof of actual malice. The Louisiana Defamation Statute, therefore, meets the test of constitutionality set forth by this court in the Sullivan case.

Appellant's statement that the eight Criminal Court judges were each influenced by racketeers went beyond criticism of official conduct, was an attack on the personal character of each judge, and constituted private defamation, which is not protected by the constitutional privilege set forth in the Sullivan case.

However, even if appellant's accusation were considered to be a criticism of official conduct and thus privileged, the privilege was destroyed by proof of appellant's actual malice.

The evidence, as shown by the record, constitutionally sustains the Louisiana court's finding of actual malice. Although the State of Louisiana negatived by affirmative proof every possible defense which appellant had, appellant offered no evidence whatever.

The state proved beyond a reasonable doubt that appellant made the accusation of "racketeer influence" knowing that it was false or with a reckless disregard to whether it was false or not, and this evidence stands uncontradicted.

In view of the foregoing, it is respectfully submitted that this appeal should be dismissed or in the alternative that the judgment of the State Court should be affirmed.

JACK P. F. GREMILLION,
Attorney General,
State of Louisiana,
2201 State Capitol,
Baton Rouge, Louisiana.

M. E. CULLIGAN,
Assistant Attorney General,
State of Louisiana,
104 Supreme Court Bldg.,
301 Loyola Avenue,
New Orleans, Louisiana.

JOHN E. JACKSON, JR.,
Assistant Attorney General,
State of Louisiana,
104 Supreme Court Bldg.,
301 Loyola Avenue,
New Orleans, Louisiana.

CERTIFICATE

I, Michael E. Culligan, a member of the Bar of the United States Supreme Court, hereby certify that this_____day of_____, 1964, a copy of the above and foregoing brief was served on Eberhard P. Deutsch and Rene H. Himel, Jr., Hibernia Bank Building, New Orleans 12, Louisiana, and Louis P. Trent, 400 Perez Building, 419 Carondelet Street, New Orleans, Louisiana, by depositing same in the United States Mail, postage prepaid.

_____

Of Counsel.

3190-B. 4-64

LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
SEP 24 1964
JOHN F. DAVIS, CLERK

Supreme Court of the United States

OCTOBER TERM, 1964

No. 4

JIM GARRISON,

Appellant

versus

STATE OF LOUISIANA,

Appellee

On Appeal from the Supreme Court of Louisiana

SECOND SUPPLEMENTAL BRIEF FOR APPELLANT (ON REARGUMENT)

Eberhard P. Deutsch,
Attorney for Appellant

Deutsch, Kerrigan & Stiles,
René H. Himel, Jr.,
Louis P. Trent,
Of Counsel

Supreme Court of the United States

OCTOBER TERM, 1964

No. 4

JIM GARRISON,

Appellant

versus

STATE OF LOUISIANA,

Appellee

SECOND SUPPLEMENTAL BRIEF FOR APPELLANT (ON REARGUMENT)

Appellant adopts, as his briefs on reargument, his original and supplemental briefs (the latter discussing the impact on this case of this Court's opinion in *New York Times vs Sullivan*) heretofore filed herein, together with this second supplemental brief.

In addition to the materials cited in the previous briefs, the Court's attention is directed to the recognition accorded, even by the dissenting Justices in the obscenity cases which this Court decided on June 22, 1964, to the right of trial by jury in criminal prosecutions for speech or writing, and to the special importance of preserving political criticism in particular from any suppressive form of governmental interfer-

ence. *Jacobellis vs Ohio* 84 S.Ct. 1676, 1685 (Warren, CJ, dissenting); *A Quantity of Books vs Kansas*, 84 S.Ct. 1723, 1733 (Harlan, J, dissenting).

Irving Brant's careful scholarship has very recently revealed the fragile basis for any assumption that the English law of seditious libel derives from the common law; and has demonstrated that "what is called today the common-law doctrine of seditious libel is in fact the creation of the Court of Star Chamber, the most iniquitous tribunal in English history". *Seditious Libel: Myth and Reality*, 39 New York University Law Review 1, 5 (1964).

Brant rightly concludes that the First Amendment was designed, not to codify any part or aspect of the English or Blackstonian rule that liberty of the press consisted in its freedom from previous restraint, but to reject and repudiate any restrictions whatever on freedom of expression, including at the least, all prosecutions for criticism of government and its officers. Id., 16-19.*

Conclusion

The Star Chamber policy underlying criminal prosecutions for criticism of judges was candidly expressed by the Judge (Lord Ashurst) who sentenced Lord George Gordon, in the same year in which the American Constitu-

* "The past damage and future danger lie not in the repudiated doctrine of previous restraint, but in the acceptance of the idea that *any* abridgment of freedom is permitted by an article of the Constitution that says there shall be *no* abridgment." Id., 19.

tion was written: "It highly concerns the good of the community, that the dignity of the (judicial) station should be vindicated against the attempts of wicked and evil-minded people, who, by endeavouring to depreciate the characters of those who are intrusted with the administration of the laws, hope by degrees to bring the law itself into contempt and abhorrence; and to sap and undermine the foundation of all order and government." 22 Howell's State Trials 175, 232-33 (1787).

Twenty-one centuries earlier, Socrates answered his judges, after they had condemned him to death as the "gadfly given to the state by God", by saying: "If you think that by killing men, you can prevent someone from censuring your evil lives, you are mistaken. . . . The easiest and the noblest way is not to be disabling others, but to be improving yourselves." *Dialogues of Plato* (Green ed.) pp. 5 *ff.*

It now lies with this Court to say whether the latter statement, although so far removed in time, is not closer to the spirit of the men who wrote the First Amendment, than the eighteenth-century views of the English judiciary, repudiated by the Founding Fathers.

Eberhard P. Deutsch,
Attorney for Appellant

Deutsch, Kerrigan & Stiles,
René H. Himel, Jr.,
Louis P. Trent,
Of Counsel

September, 1964